Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-1824

IN RE: MILTON PHILIP SCHULMAN,
Petitioner

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No._____

IN RE: MILTON PHILIP SCHULMAN,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on May 4, 1979.

CITATION TO OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division, is unreported as of this date. The opinion is set forth in the Appendix on pages 31, 33, and 36.

The opinion of the United States Court of Appeals for the Sixth Circuit is as of this date unreported. The opinion is set forth in the Appendix on page 15.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

(1) IN DISBARMENT PROCEEDINGS OF AN ATTORNEY IN THE UNITED STATES DISTRICT COURT, WHAT DUE PROCESS OF LAW IS GUARANTEED TO SAID ATTORNEY UNDER THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

(2) CAN A DISTRICT COURT PUNISH FOR CONTEMPT OF COURT AN ATTORNEY BY SUSPENDING HIM FROM THE PRACTICE OF LAW?

(3) WHAT LIMITS THE POWER OF THE UNITED STATES DISTRICT COURT TO EMPLOY SUMMARY CONTEMPT POWERS AGAINST AN ATTORNEY?

(4) IN A CRIMINAL SUMMARY CONTEMPT OF COURT PROCEEDING AGAINST AN ATTORNEY, MUST THERE BE A COMPLIANCE WITH CRIMINAL RULE 42?

(5) WAS PETITIONER'S CONDUCT CONTEMPTUOUS?

CONSTITUTION AND STATUTES INVOLVED
UNITED STATES CONSTITUTION
FIFTH AMENDMENT

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

18 U.S.C., FEDERAL RULES OF CRIMINAL PROCEDURE
RULE 42

Rule 42. **Criminal Contempt.**

(a) **Summary Disposition.** A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

STATEMENT OF FACTS

On February 22, 1979, Judge Krupansky issued the following order against petitioner:

1. Suspended petitioner from the practice of law for two (2) years in the U.S. District Court for the Northern District of Ohio; until he,

2. Satisfactorily demonstrated to Judge Krupansky a proficiency and understanding of the Federal Rules of Civil Procedure, Evidence, local rules for the Northern District of Ohio, and the Ethical Consideration of the American Bar Association Code of Professional Responsibility; and until he,

3. Satisfactorily demonstrated an abiding commitment to conduct himself in a manner commensurate with the Ethical Consideration of the American Bar Association of Professional Responsibility; and until he,

4. Presented to Judge Krupansky a certificate that he, petitioner, has completed, after the date of this order, a course of study conducted by an accredited law school in the following subjects:

a. Federal Practice and Procedure, including Federal Rules of Civil Procedure—six (6) hours,

b. Evidence—minimum three (3) hours,

c. Federal Rules of Evidence—minimum four (4) hours,

d. Criminal Law and Procedure, including Federal Rules of Criminal Procedure—minimum three (3) hours,

e. Trial Advocacy—minimum four (4) hours,

f. Professional Responsibility—minimum two (2) hours,

g. actual attendance and participation, as certified by a member of the Bar of the United States District Court for the Northern District of Ohio, in four experiences of some combination of contested testimonial trials in a federal court of record under the supervision of an experienced trial lawyer admitted to practice.

Further, the court fined petitioner the sum of Twelve Hundred Fifty Dollars ($1,250.00) and suspended One Thousand Dollars ($1,000.00) of that fine upon the payment of Two Hundred Fifty Dollars ($250.00) by not later than March 26, 1979.

Petitioner in the matter of Barbara Ford versus Ken Kinzel, et al., being Case Number C 78-1189 in the U.S. District Court for the Northern District of Ohio, Eastern Division, filed on December 4, 1978, an Affidavit of Bias and Prejudice, in compliance with 28 U.S.C. Section 144 against Judge Krupansky. (See Appendix Page 18 for said affidavit)

On December 8, 1978, Judge Krupansky denied said Affidavit of Bias and Prejudice. (See Appendix Page 23 for a copy of said order of Judge Krupansky.)

In the Memorandum and Order of Judge Krupansky

denying the Affidavit of Bias and Prejudice, (see Appendix Page 18) there appears the following language, which petitioner believes foreshadows the reason why Judge Krupansky found petitioner in contempt of court:

> "Conduct on the part of any attorney, however, which frustrates and/or demeans the orderly procedures imposed by the rules of the United States District Court for the Northern District of Ohio, the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the rules and Orders of this Court will not be contenanced."

Judge Krupansky has before him the anti-trust law suit of City of Cleveland versus Cleveland Electric Illuminating Company.

Mr. Jack Schulman, the son of petitioner, is the Law Director for the City of Cleveland.

Recently, certain legal motions have infuriated the Judge so that he has placed that litigation at the bottom of his trial schedule.

Further, the Cleveland Electric Illuminating Company has secured judgments against the City of Cleveland. The judgments were put into execution by placing liens against assets of the City of Cleveland.

Petitioner sought to approach Judge Krupansky with a view to purchase said judgments.

Judge Krupansky was not in when petitioner attempted to see the Judge. Petitioner instead saw Judge Krupansky's law clerk. Petitioner informed the law clerk of his business with the Judge. Petitioner found that the law clerk was being snotty and sarcastic with him. Petitioner told the law clerk to understand that his business was with the Judge and not with him; that the law clerk was to request the

Judge to call petitioner to set up an appointment with the Judge, counsel for the Cleveland Electric Illuminating Company, and the City to discuss the purchase of the liens.

The law clerk gave the judge an opportunity to forestall the meeting between the attorneys for the Cleveland Electric Illuminating Company, the City of Cleveland and the Judge, and had his law clerk state in a record that petitioner insulted the law clerk and used abusive language.

With this preview, the housing case of Barbara Ford against Ken Kinzel, et al. began.

During the procedure on December 14, 1978, after a conference at the bench, the court found petitioner in summary contempt. This occurred while petitioner was cross-examining the plaintiff. (See Appendix Page 66)

On December 15, 1978, the court found petitioner in summary contempt while petitioner was examing his witness. (See Appendix Page 72)

From the judgment and fines of February 22, 1979, petitioner filed his Notice of Appeal.

On May 4, 1979, the United States Court of Appeals for the Sixth Circuit issued its order (see Appendix Page 15) holding that petitioner was in contempt of court, but the suspension order from the practice of law was remanded to the District Court with instructions.

From this order petitioner now asks relief from this Court.

REASONS FOR GRANTING THE WRIT

[1] In disbarment proceedings of an attorney in the United States District Court, what due process of

law is guaranteed to said attorney under the Fifth Amendment to the United States Constitution?

"Like the school teacher in Slochower v. Board of Education, 350 U.S. 551 (1956), and the policement in Garrity v. New Jersey, 385 U.S. 493 (1967), lawyers also enjoy first-class citizenship." Spevak v. Klein, 385 U.S. 511 (1967(, p. 516.

Disbarment proceedings are not to be taken lightly by the courts. They have been described by the Supreme Court as being "adversary proceedings of a quasi-criminal nature" in which "the requirements of procedural due process must be met" before a disbarment order is entered. In re Ruffalo (1968), 390 U.S. 544, p. 551; Willner v. Committee on Character (1963), 373 U.S. 96, 102; Ex parte Robinson, 19 Wall 505 (1874).

Before an attorney may be disbarred, he must have notice of the charges against him and an opportunity to defend himself against them. Ex parte Robinson, 19 Wall 505, 512 (1874).

Disbarment proceedings are limited by the due process clause of the Fifth Amendment. In re Ruffalo (1968), 390 U.S. 544, Spevack v. Klein (1967), 383 U.S. 511; Ex Parte Wall (1883), 107 U.S. 265.

The Court of Appeals in its opinion and judgment in this matter held that the disbarment proceedings are to be held on the record in the trial court.

Petitioner is unaware from what part of the record his conduct was unprofessional. Petitioner desires to know exactly what charge, what conduct in the record was unprofessional.

This Court has held on numerous occasions that notice

of the charge is elementary; notice that fairly advises what the Government proposes and especially when petitioner is in a controversy with the Government, as here in a quasi judicial contest. Citing: Morgan v. U.S., 304 U.S. 1, pg. 18, 19 (1938).

As stated in Morgan, supra, the right to be heard embraces not only the right to be heard, but the right to know the claim of the opponent and to meet them. Otherwise, the claim may be a barren one.

[2] Can a District Court punish for contempt of court an attorney by suspending him from the practice of law?

Although the suspension and disbarment hearing is separate and distinct from the contempt proceeding, the trial court judge initially disbarred petitioner, because of his alleged contemptuous conduct.

Petitioner alleges the claim that he is being punished twice by 18 U.S.C., Section 401. The only punishment a court can levy for contemptuous conduct is a fine or imprisonment. In Ex Parte Robinson, 1873, 86 U.S. 505, 19 Wall 505, 22 L. Ed. 207, this Court held that the disbarment of an attorney as punishment for conduct was unauthorized and void.

Petitioner contends that the U.S. District Court, and especially the trial court, lacks the jurisdiction and the power to disbar or suspend petitioner as the result of the alleged contemptuous conduct.

[3] What limits the power of the United States District Court to employ summary contempt powers against an attorney?

"That contempt power over counsel, summary or

otherwise, is capable of abuse is certain. Men who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weakness to which human flesh is heir." Sacher v. U.S., 343 U.S. 1, 12, 96 L. Ed. 717 (1952).

"This course of events demonstrates the unwisdom of vesting the judiciary with completely untrammeled power to punish contempt, and makes clear the need for effective safeguards against that power's abuse." Bloom v. Illinois, 391 U.S. 194, 20 L. Ed. 522, 1968.

Congress to protect the innocent against the untrammeled power of the courts to punish via the summary contempt power enacted Title 18 U.S.C. Section 401, which reads as follows:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> (2) Misbehavior of any kind of its officers in their official transaction;
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree or command."

Thus, summary contempt power procedure may not be used where notice and hearing will be equally effective. Harris v. U.S., (1965), 383 U.S. 162, (1965).

Accordingly, it remains the rule, as it has been for nearly 150 years, the limits of the power to punish for contempt are "the least possible power adequate to the end proposed." Anderson v. Dunn, 1821, 6 Wheat. (19 U.S.) 204, 231, (1821),; In re Michael, 326 U.S. 224, 227 (1945)

Recent litigation has confirmed narrowly the power of

the court to find a lawyer guilty of contempt for his good faith efforts to represent his client. In re McConnell, 370 U.S. 230 (1962).

In conclusion, this Court in Cammer v. U.S., 350 U.S. 399 (1956) on p. 404 and In re Michael, 326 U.S. 224 (1945) p. 227 held that former and present Title 18 U.S.C., Section 401 "has construed the Act as embodying a congressional plan to limit the contempt power to 'the least possible power adequate to the end proposed.' See Anderson v. Dunn (U.S.) 6 Wheat. 204, 231. We added, 'The exercise by federal courts of any broader contempt power than this would permit too great inroads on the procedural safeguards of the Bill of Rights, since contempts are summary in nature, and leave determination of guilt to a judge rather than a jury.' "

[4] In a criminal summary contempt of court proceeding against an attorney, must there be a compliance with Criminal Rule 42?

There must be a compliance with Criminal Rule 42 in summary contempt proceedings.

This was summary criminal contempt, since the alleged contempt occurred in the presence of the court.

Criminal Rule 42(a) of the Federal Rules of Criminal Procedure clearly mandates that the trial judge must certify that he saw or heard the conduct constituting the contempt that was committed in his actual presence. The certificate must recite the facts and shall be signed by the judge and entered of record.

Petitioner contends that if no certificate is filed, then there is no contempt. There are many Court of Appeals' citations to that effect. A few are: In re Williams,

(C.A.-5th), 1975, 509 F. 2d 940; U.S. v. Camil, (C.A.-5th), 1974, 497 F.2d 225; U.S. v. Schrimsher, (C.A.-5th), 1974, 493 F.2d 842; Pietsche v. President, (C.A.-2nd), 1970, 434 F.2d 861; U.S. v. Marshall, (C.A.-9th), 1971, 451 F.2d 372, 375.

[5] Was petitioner's conduct contemptuous so as to be punished by summary action by the trial judge

The transcript of proceedings for December 14 and 15th, 1978, clearly demonstrates that petitioner's conduct was not contemptuous.

Petitioner was not attempting to obstruct the court's proceedings.

Petitioner was a confused attorney; petitioner was valiantly attempting to ascertain from the trial court judge, what was he doing wrong.

Petitioner requested clarification from the trial judge, but the trial court judge response was that he was not here to teach petitioner a course in evidence.

Petitioner never raised his voice to the trial court judge; petitioner never argued with the trial court judge, but petitioner attempted to question the witnesses as best as he could.

The first time that petitioner was cited for contempt of court was after a conference at the bench. The record is devoid of what caused the trial court judge to cite petitioner for contempt of court.

From a reading of the trial transcript, it can be ascertained that opposing counsel did not object, but the trial court judge did all the objecting and sustained his objections.

The trial court judge not only found petitioner in

contempt of court three (3) times, but also found the husband of a witness in contempt of court.

This court held in In re McConnell, 370 U.S. 230 (1962) that it will grant certiorari to review a contempt conviction where it is important to assure alert self-restraint in the exercise by district judges of summary power for punishing contempt.

Further in In re McConnell, supra, the Court held that the power of the court to punish misbehavior summarily in violation of 18 U.S.C. §401 rests upon an obstruction to the performance of judicial duty resulting from an act done in the presence of the court, and the existence of that element (obstruction of the court) must be clearly shown in every case where summary contempt power is exercised.

To preserve the kind of trials that the American systems envisages, Congress has limited in 18 U.S.C. §401, the summary power vested in courts of the United States to the least possible power adequate to prevent actual obstruction of justice.

Thus, the question in this case as in In re McConnell, supra, is whether or not, it can be clearly shown on the record that petitioner's conduct actually obstructed the district court in the performance of judicial duty.

Petitioner alleges that there is nothing in the record that he created an actual obstruction.

It is necessary to grant certiorari in this matter to restrain the district court judge in his exercise of summary contempt power.

It is necessary and essential that lawyers be able to make honest good-faith efforts to present their clients' cases. "An independent judiciary and a vigorous,

independent bar are both indispensable parts of our system of justice." In re McConnell, supra, page 236.

In the instant matter, the trial court never filed the required certificate in compliance with Criminal Rule 42(a) of the Federal Rules of Criminal Procedure.

Petitioner believes this to be a grievous and reversible error.

CONCLUSION

Petitioner's reason for appealing the Court of Appeals' order in this matter is that the necessary grounds for his disbarment proceedings are missing. If there is to be a disbarment proceeding, there must be notice of the unprofessional conduct. Further, petitioner believes that his conduct at trial was not contemptuous, but the trial court judge himself objected as to how petitioner was presenting the evidence. Opposing counsel did not object, but the trial court judge objected.

Petitioner was bewildered and confused; did not understand the reason for the trial court's objections, and requested clarification from the trial court judge on many occasions. The trial court's response to this was: "I am not here to teach you the rules of evidence."

Petitioner's conduct was not obstructionist, petitioner was not attempting to delay the trial, but petitioner's conduct and action was one of a confused and bewildered attorney.

RELIEF ULTIMATELY SOUGHT

Petitioner believes that this court should rule that his

conduct was not contemptuous. If disbarment proceedings are to proceed against petitioner, definite charges of what constituted petitioner's unprofessional conduct should be first leveled against petitioner.

Respectfully submitted,

WALTER S. HAFFNER
Attorney for Petitioner.

CERTIFICATE OF SERVICE

A copy of the foregoing Petitioner for Writ of Certiorari and with Appendix was served upon Mr. Solomon Oliver, Jr., Esq., Assistant U.S. Attorney, 400 U.S. Courthouse, Cleveland, Ohio 44114, by United States mail, first class postage prepaid, _____, 1979.

WALTER S. HAFFNER
Attorney at Law.

OPINION OF THE COURT OF APPEALS

(Filed May 4, 1979)
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 79-3183

IN RE:
MILTON PHILIP SCHULMAN, ORDER
Petitioner-Appellant
_____/

Before: LIVELY and ENGEL, Circuit Judges and PHILLIPS, Senior Circuit Judge.

In his notice of appeal Milton P. Schulman appeals from an order of February 22, 1979, entered by the United States District Court for the Northern District of Ohio, Eastern Division, in a case styled "Barbara Ford, Plaintiff v. Ken Kinzel, et al., Defendants". It appears that two orders were in fact entered that day, one fixing punishment against petitioner Schulman for acts of contempt found by the court to have been committed by him in the captioned case on December 14 and 15, 1978, and in the presence of the court, and the second striking Schulman's name from the roll of attorneys authorized to appear and engage in the practice of law before the bar of the United States District Court for the Northern District of Ohio and imposing conditions upon his readmission, as more particularly set forth in that order.

While the notice of appeal does not designate which of the two orders from which appeal is sought, the court treats the error as non-jurisdictional and construes the notice to apply to both orders.

With respect to the first order, finding Schulman in contempt of court, the court finds that ample evidence supports the trial judge's findings of contempt and that said acts of contempt having been committed in his presence, the trial court did not err in acting summarily thereon. Rule 42(a), Fed. R. Crim. Pro.

With respect to the second order, the court rejects appellant's claim that the district court was without power to disbar Schulman for his misconduct. While 18 U.S.C. §401 (1976) prescribes the punishments which may be imposed for criminal contempt, the power to disbar an attorney proceeds not from the power to punish contemptuous conduct but from the court's power to supervise attorneys admitted to practice before it. Ex parte Robinson, 86 U.S. (19 Wall.) 505, 512-13 (1873). Consequently, the remedies for attorney misconduct are not limited to those specified in 18 U.S.C. §401. See id. at 512; Rule 2(g), Rules of the United States District Court for the Northern District of Ohio.

We agree with appellant, however, that the court below erred in the procedures it employed in disbarring Schulman. There appears to have been no pressing need to proceed to adjudicate the charge upon the short notice afforded in the instant case. Moreover, it is evident from the record that marked personal feelings were present on both sides, and it appears that Schulman's conduct left personal stings, however justified. Mayberry v. Pennsyl-

vania, 400 U. S. 455, 464 (1971). We conclude that the trial judge should more properly have recused himself and referred the matter for disposition before another judge. Taylor v. Hayes, 418 U.S. 488, 501-03 (1974); Cf. Rule 42(b), Fed. R. Crim. Pro.

We hold that upon remand, the case should be reassigned and Schulman should be afforded the opportunity to address the charges, through counsel if he so elects, after a reasonable time to examine the record of the trial in Ford v. Kinzel, supra, and the transcript of the show cause hearing on December 20, 1978. In so holding, we recognize that Schulman's opportunity to be heard need not contemplate a full-scale trial, particularly since the matter largely turns upon an evaluation of the record. See Taylor v. Hayes, supra, 418 U.S. at 499. Accordingly,

IT IS ORDERED that the order of the district court first above referred to, finding petitioner in contempt of court as therein set forth, is affirmed.

IT IS FURTHER ORDERED that the order disbarring Schulman is vacated and the cause remanded for further proceedings consistent with this order.

ENTERED BY ORDER OF THE COURT

(signed) John P. Hehman
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BARBARA FORD,	:	CASE NO. C 78-1169
Plaintiff,	:	Judge Robert B. Krupansky
-vs-	:	
KEN KINZEL, et al.,	:	**AFFIDAVIT OF BIAS AND**
Defendants.	:	**PREJUDICE**

Now comes the attorney for the defendants, Ken Kinzel and Naomi Kinzel, pursuant to 28 U.S.C.A. 144, and submits the within Affidavit of Bias and Prejudice relating to the qualification of the Honorable Robert B. Krupansky to hear the within cause.

This Affidavit is submitted upon the following grounds: that the Honorable Robert B. Krupansky has a personal bias and prejudice against attorney for the defendants, Milt Schulman.

AFFIDAVIT

MILT SCHULMAN, being first duly sworn, deposes and states as follows:

That he is the attorney for the defendants, Ken Kinzel and Naomi Kinzel, in the within action.

That this case involves an alleged violation of civil rights of the plaintiff, Barbara Ford, and has been assigned to the Honorable Robert B. Krupansky.

That in the case of City of Cleveland vs. The Cleveland Electric Illuminating Company, being Civil Action No. C

75-560, the Honorable Robert B. Krupansky is the presiding judge.

That prior to March 1, 1978, the Honorable Robert B. Krupansky issued several judgments against the City of Cleveland in the aforementioned case and ordered that the City pay the judgments, which amounted to, on or about March 1, 1978, approximately $19 million before December 31, 1978.

That the Affiant visited the offices of the Honorable Robert B. Krupansky and was met by the Law Clerk who served Judge Krupansky.

That Affiant told the Law Clerk that he wished to discuss with the Judge the possibility of purchasing the judgment liens from the Cleveland Electric Illuminating Company and wanted to discuss the method of purchasing those liens with the Court.

That the Law Clerk thereupon started questioning the Affiant as to how, what, when, and why Affiant wanted to talk to the Judge and how Affiant was interested in purchasing the judgment liens from the Cleveland Electric Illuminating Company.

That Affiant thereupon told the Law Clerk that he was not interested in speaking to the Law Clerk, but that he came to visit Judge Krupansky and discuss it with the Judge and not with the Law Clerk.

That the Law Clerk thereupon stated to the Affiant: "You are not showing deference to the Court."

That Affiant thereupon told the Law Clerk that he was not a judge and that Affiant showed deference to no one, but he does show respect to a court and told the Law Clerk that he should inform the Judge that Affiant was there and

requested that Judge Krupansky call him to make an appointment for him to come in to see the Judge.

That apparently, the Law Clerk was not happy with the fact that Affiant did not pay deference to him and thereafter, when Judge Krupansky arrived in his office, evidently told him that Affiant was very abusive to him, which was not true.

That the next day, Judge Krupansky called counsel for the City of Cleveland in the case of City of Cleveland vs. The Cleveland Electric Illuminating Company, being Case No. C 75-560, into his chambers and recounted the story that his Law Clerk had told him about Affiant's visit and stated that he was exercised over Affiant's visit and behavior, as recounted to him by the Law Clerk, and in the presence of the attorney for the City of Cleveland called in a court reporter and made a record of what his Law Clerk allegedly told him transpired during Affiant's visit to the Court's offices.

That Judge Krupansky then ordered that the record be placed under seal and filed with the record in the case of City of Cleveland vs. The Cleveland Electric Illuminating Company, being Case No. C 75-560.

That Judge Krupansky did not call Affiant to discuss or to find out exactly what happened in his office when Affiant was there, and Affiant was not aware of the proceedings held by the Court in reference to his visit to the Judge's offices until several months thereafter.

That Affiant was retained by the defendants in this action, Ken Kinzel and Naomi Kinzel, to defend them in the Complaint filed against them by the plaintiff, and was not

treated by the Court in a manner in which an attorney is ordinarily treated, but was belittled and demeaned by the Court during the hearing held on October 30, 1978.

That the captioned case is set for trial on December 13, 1978, and yesterday, November 30, 1978, Affiant called Judge Krupansky, who was busy in court, and left a message for the Judge.

That the Law Clerk, by the name of Mr. Kennedy, called Affiant and asked what he wanted to speak to the Judge about, and Affiant informed Mr. Kennedy that it was a personal matter and that he would only discuss the purpose of the call with Judge Krupansky.

That about 3:00 p.m. yesterday, November 30th, Judge Krupansky called the Affiant and Affiant told Judge Krupansky that he would like to know where he stood with the Judge, in view of the fact that when he appeared in the offices of his Honor on March 4th or 5th, 1978, his Honor, instead of calling Affiant, called the attorney for the City with whom Affiant had no contact nor interest in the trial and went through the procedure as stated above.

That Judge Krupansky was very short, did not want to discuss the reason for not calling Affiant in after the Law Clerk had informed his Honor of Affiant's visit on March 3rd or 4th, and then hung up.

That at 3:20 p.m., November 30, 1978, Affiant received a call from Mr. Kennedy, Judge Krupansky's Law Clerk and was told that Affiant should file an Affidavit of Bias and Prejudice.

That because of the foregoing, there is no question in Affiant's mind that the Honorable Robert B. Krupansky is biased and prejudiced as to Affiant, and, as a result of the

bias and prejudice against the Affiant, Affiant's clients will be prejudiced.

For the foregoing reasons, Affiant has determined that the Honorable Robert B. Krupansky is not qualified to preside in the captioned case and, therefore, should disqualify himself and have the case assigned to another judge for hearing.

(signed) Milt Schulman
MILT SCHULMAN

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

SWORN TO BEFORE ME and subscribed in my presence this 1st day of December, 1978.

(signed) Dolores M. Scully
NOTARY PUBLIC

SERVICE

A copy of the foregoing was sent this 1st day of December, 1978 to Mr. Avery Friedman, Esq., 706 Citizens Building, Cleveland, Ohio 44114.

(signed) Milt Schulman
MILT SCHULMAN
748 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113
(216) 621-0580

Attorney for Defendants Ken Kinzel and Naomi Kinzel.

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Filed December 8, 1978)

BARBARA FORD,	)	CIVIL ACTION NO. C78-1169
Plaintiff	)	
v.	)	
KEN KINZEL, et al.,	)	
Defendants	)	**MEMORANDUM AND**
	)	**AND ORDER**

KRUPANSKY, J.

This is a civil action instituted by the plaintiff, Barbara Ford, a black female, pursuant to 42 U.S.C. §§1981 and 1982, to redress alleged racial discrimination in the rental of private property practiced against her by the defendants, Ken Kinzel and Naomi Kinzel.

The defendants' legal counsel, Milton Schulman (Schulman), has filed an Affidavit of Bias and Prejudice to disqualify the Honorable Robert B. Krupansky as the presiding judge in the above captioned action. The affidavit is grounded on an incident that occurred on March 6, 1978. On that date at approximately 10:00 a.m. Schulman entered the Court's offices and repeatedly, in an abusive manner, demanded to confer with the Judge, who was then confined to his home with an illness. Schulman insisted on discussing, in private, City of Cleveland v. The Cleveland Electric Illuminating Co., No. C75-560, a civil action, then, and presently pending before the Court. He was neither legal counsel in, nor a party to, the case. Court personnel advised Schulman of the Judge's absence and of the Court's

policy not to discuss pending litigation absent the presence of all interested legal counsel. Schulman thereupon, in a provocative display of agitated emotion, repeated his demand to privately confer with the Judge and proceeded to excoriate Court personnel for frustrating his undertaking.

On the following day, en route to the doctor's office, the Judge, while conferring with his staff, was advised of the incident. In an effort to avoid embarrassment to the City of Cleveland, its Mayor, and, particularly, its Director of Law, Jack Schulman, the son of attorney Milton Schulman, the Judge related the contemptuous incident to William B. Norris (Norris) of Hahn, Loeser, Freedheim, Dean & Wellman, counsel of record for the City of Cleveland in Civil Action No. C75-560, who had been requested to appear in the Court's chambers. The Court suggested to Norris that he advise the Law Director of his father's intemperate conduct and direct him to cease and desist from future improprieties. Norris, expressing appreciation for the Court's consideration, agreed to the Court's suggestion. On the following day, Norris reported that he had conveyed the Court's request and extended the Law Director's apologies and assurances that there would be no reoccurrence of the incident. Thereafter, the incident was forgotten by the Court until November 30, 1978 when Schulman attempted to revive the facts of the incident of March 6 during a polemic telephone conversation initiated by him for that purpose and presumably within the context of this action. The Court refused to be engaged. On that same date, the Court instructed its clerk to advise Schulman of his right to formally present any issue in controversy to the Court by appropriate pleadings. This Affidavit of Bias and Prejudice

thereafter resulted.

28 U.S.C. §144 provides the procedure and circumstance for recusing a United States district judge from presiding in a case assigned to his docket and states in pertinent parts as follows:

> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

The criteria for evaluating the sufficiency of the allegations contained in an affidavit filed pursuant to §144, was restated by the Court of Appeals for the District of Columbia in United States v. Haldeman, 559 F.2d 31, 134 (D.C. Cir. (1976), cert. denied sub nom. Mitchell, et al. v. United States, 431 U.S. 933, rehearing denied, 433 U.S. 916 (1977), as follows:

> Section 144 specifies that "(t)he affidavit" supporting a motion thereunder "shall state the facts and the reasons for the belief that bias or prejudice exists," and it does so for the best reasons. This provision, like the accompanying mandate that counsel of record certify that the affidavit is made in good faith, was designed to guard against groundless claims and the impositions they would inflict on the judicial process. To achieve that end, the courts have consistently held that the affidavit must meet exacting standards. It must be strictly construed; it must be definite as to time, place, persons and circumstances. Assertions merely of a conclusory nature are not enough, nor are opinions or rumors. And the affidavit "must give fair support to the

> charge of a bent of mind that may prevent or impede impartiality of judgment." (citations in footnotes omitted)

See also, Berger v. United States, 255 U.S. 22, 32-35 (1921); United States v. Haldeman, supra at 131; United States v. Bell, 351 F.2d 868, 878 (6th Cir. 1965), cert. denied, 383 U.S. 947 (1966).

Initially, it should be noted that the right extended by 28 U.S.C., §§144 and 445 is to a real party in interest to the litigation and not legal counsel. The sections, moreover, mandate that legal counsel of record certify the affidavit as having been made in good faith by such real party in interest. Non-compliance with the foregoing is apparent from the face of the pleading presently before the Court. Davis v. Bd. of School Com'rs of Mobile County, 517 F2d 1044, 1052 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976),

> We thus hold that an appellate court, in passing on questions of disqualification of the type here presented, should determine the disqualification on the basis of conduct which shows bias or prejudice or lack of impartiality by focusing on a party rather than counsel. The determination should also be made on the basis of conduct extra-judicial in nature as distinguished from conduct within a judicial context.

Accord, Smith v. Danyo, 441 F. Supp. 171 (M.D. Pa. 1977); United States v. Nehas, 368 F. Supp. 435 (W.D. Pa. 1973).

As concomitant statutory provisions, §144 and §455 must be construed in pari materia, Davis v. Bd., supra at 1052:

> The determination (of disqualification) should also be made on the basis of conduct extra-judicial in nature as distinguished from conduct within a judicial context. This means that we give §§144 and

455 the same meaning legally for these purposes, whether for purposes of bias and prejudice or when the impartiality of the judge might reasonably be questioned.

Inasmuch as the thrust of 28 U.S.C. §§144 and 445 is to provide relief to a party in interest to litigation under defined circumstances resulting from extra-judicial conduct as distinguished from conduct within a judicial context, the mere fact that defendants' legal counsel was the subject of previous judicial action in an unrelated judicial proceeding or even a judicial contempt for conduct before the court during previous judicial proceedings unrelated to the defendants would not support or warrant the Judge's disqualification from a pending case.

Naomi Kinzel and Ken Kinzel were in no way involved or related to the March 6, 1978 incident, the genesis of which was an unrelated judicial proceeding.

Prior to the hearing on the plaintiff's Motion for Preliminary Injunction on September 22, 1978, Naomi Kinzel and Ken Kinzel were strangers to the Court. Except for the March 6 incident and his Court appearance on September 22, 1978, Schulman was equally a stranger to the Court. More importantly, this civil proceeding is but one of many assigned by the Clerk to this Court. Contrary to the implications of Schulman's affidavit, the Court views him as impersonally as it does any other attorney appearing before it, and shall administer the trial of this cause in an equally impersonal manner, preserving the rights of the plaintiffs and defendants alike by permitting a jury to arrive at whatever conclusion it may find from the evidence.

Conduct on the part of any attorney, however, which

frustrates and/or demeans the orderly procedures imposed by the rules of the United States District Court for the Northern District of Ohio, the Federal Rules of Civil Procedure, Federal Rules of Evidence, and the rules and Orders of this Court will not be countenanced.

Accordingly, for the reasons aforesaid, and the insufficiency of the affidavit on its face in failing to comply with the exacting standards and requirements of 28 U.S.C. §§144 and 445, Schulman's Affidavit of Bias and Prejudice is hereby dismissed.

IT IS SO ORDERED.

(signed) Robert B. Krupansky
United States District Judge

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Filed December 20, 1978)

In Re:	)	
MILTON SCHULMAN	)	**NOTICE OF HEARING**
	)	**AND ORDER**

KRUPANSKY, J.

It appearing to the Court that Milton Schulman, an attorney admitted to practice before the United States District Court for the Northern Dictrict of Ohio pursuant to Rule 2 of the Local Civil Rules of said Court, did throughout the prosecution of Civil Action No. C78-1169, styled Barbara Ford v. Ken Kinzel, et al., knowingly and intentionally comport himself in an unprofessional manner designed and calculated to frustrate, delay, and demean the orderly process of justice and administration of the Court, in deliberate disregard of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the United States District Court for the Northern District of Ohio, and the specific rules and Orders of this Court; and did, despite the repeated requests, admonitions, and Orders of the Court, persist in an irresponsible course of conduct which obstructed, delayed, and demeaned the due administration of justice and the orderly conduct of this Court's business:

Now, therefore, IT IS HEREBY ORDERED that the said Milton Schulman appear before this Court on December 20, 1978 at 1:30 p.m. to give account for his conduct and to show cause why the Clerk of the United States District

Court for the Northern District of Ohio should not be ordered to strike the name of Milton Schulman from the rolls of attorneys authorized to appear before and engage in the practice of law in the United States District Court for the Northern District of Ohio.

IT IS FURTHER ORDERED that the United States Marshal shall personally serve a certified copy of this Order upon Milton Schulman in accordance with law.

IT IS SO ORDERED.

(signed) Robert B. Krupansky
United States District Judge

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Filed February 22, 1979

BARBARA FORD,	)	CIVIL ACTION NO. C78-1169
Plaintiff	)	
v.	)	
KEN KINZEL, et al.,	)	
Defendants	)	**MEMORANDUM AND**
In Re: MILTON PHILIP	)	**ORDER**
SCHULMAN	)	

KRUPANSKY, J.

In accordance with the Memorandum decision of February 21, 1979, the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, is hereby:

1. ordered to strike the name of Milton Philip Schulman from the roll of attorneys authorized to appear and engage in the practice of law before Bar of the United States District Court for the Northern District of Ohio; and
2. enjoined from accepting any application from or on behalf of Milton Philip Schulman for admission, re-admission and/or reinstatement to appear and engage in the practice of law before the Bar of the United States District Court for the Northern District of Ohio for a period of not less than two (2) years from February 21, 1979; and

3. enjoined thereafter from entering the name of Milton Philip Schulman upon the roll of attorneys authorized to appear and engage in the practice of law before the Bar of the United States District Court for the Northern District of Ohio until such time as the said Milton Philip Schulman has complied with the requirements specified in the Memorandum decision of February 21, 1979 and until further order of this Court.

IT IS SO ORDERED.

(signed) Robert B. Krupansky
United States District Judge

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Filed February 22, 1979)

BARBARA FORD, Plaintiff	)	CIVIL ACTION NO. C78-1169
v.	)	
KEN KINZEL, et al., Defendants	)	
In Re: MILTON PHILIP SCHULMAN	)	**MEMORANDUM AND ORDER**

KRUPANSKY, J.

It appearing to the Court that on December 14, 1978, within the presence of the Court during the trial of civil action C78-1169 styled Barbara Ford v. Ken Kinzel, et al., defendants' attorney, Milton Philip Schulman (Schulman) did knowingly and wilfully pursue a course of conduct designed and calculated to disrupt the orderly administration of the proceedings by repeatedly disregarding the requests, admonitions and orders of this Court in the examination of a witness as is more fully disclosed by the record of these proceedings whereupon the Court imposed a finding of summary contempt against Schulman and levied a fine of $250.00.

Thereafter, on December 15, 1978, Schulman persisted in his factitious outbursts and provocative conduct calculated to disrupt the orderly administration of the Court as is disclosed by the record herein requiring the imposition of two additional separate findings of summary contempt, together with two additional levies in the amount of $500.00 each against Schulman.

NOW, THEREFORE, it is hereby adjudged that the conduct of Schulman on December 14 and 15 of 1978, in the presence of the Court during the trial of civil action C78-1169 styled Barbara Ford v. Ken Kinzel, et al. constituted separate acts of contempt of this Court in violation of 18 U.S.C. §401 (1) and a fine in the amount of $250.00 is hereby imposed for the contemptuous act of December 14, 1978, and a fine in the amount of $500.00 is

hereby levied upon the said Schulman for each of the contemptuous acts that occurred on December 15, 1978 pursuant to 18 U.S.C. §401(1).

The course of conduct pursued by Schulman, both before and during the administration of this trial and the gravity of his persistent, contumacious conduct throughout the prosecution of this civil action and his total disregard of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the United States District Court for the Northern District of Ohio, the rules and orders of this Court, the Ethical Considerations of the American Bar Association Code of Professional Responsibility, together with his demonstrated total disregard of standards of professional courtesy, competence and deportment as reflected in his calculated and wilful endeavor to subvert the procedures mandated by the rules and Orders governing this Court necessary for the due administration of justice have necessitated this Court to Order the name of Milton Philip Schulman to be stricken from the roll of attorneys authorized to appear and engage in the practice of law before the bar of the United States District Court for the Northern District of Ohio for the reasons more fully set forth in this Court's Memorandum and Order dated February 21, 1979.

In view of the suspension of Schulman from appearing and engaging in the practice of law before the United States District Court for the Northern District of Ohio for a minimum period of two years pursuant to this Court's Order of February 21, 1979, it is further adjudged and decreed that, upon the payment of $50.00 to the Clerk of the United States District Court for the Northern District of Ohio by the contemnor by not later than March 26, 1979, the balance of $200.00 constituting the fine imposed for the contemptuous acts of December 14, 1978 is suspended; that upon the payment of $100.00 by the contemnor to the Clerk of the United States District Court for the Northern District of Ohio by not later than March 26, 1979, as against each of the $500.00 separate fines levied for the contemptuous acts of December 15, the balance of $400.00 in each instance is

suspended. [1]

IT IS SO ORDERED.

(signed) Robert B. Krupansky
United States District Judge

[1] The aggregate payment intended by the contemnor for all three fines is $250.00

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
(Filed February 21, 1979)

BARBARA FORD,	)	CIVIL ACTION NO. C78-1169
Plaintiff	)	
v.	)	
KEN KINZEL, et al.,	)	
Defendants	)	
In Re: MILTON PHILIP	)	**MEMORANDUM AND**
SCHULMAN	)	**ORDER**

KRUPANSKY, J.

This is a proceeding instituted pursuant to the Local Civil Rules of the United States District Court for the Northern District of Ohio to ascertain the continued fitness of the respondent, attorney Milton Philip Schulman (Schulman), to engage in the practice of law before this Court, in view of his conduct throughout the prosecution of this civil action, and his disregard of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the United States District Court for the Northern District of Ohio, and the rules and orders of this Court.

The Court and the Bar are charged with the duty to efficiently and economically utilize the time and effort of jurors, witnesses, parties, counsel, and the Court to effectively advance the administration of justice by affording litigants an opportunity for a clear, concise, and objective exposition of facts and issues. Accordingly, as embodied in the mandatory Ethical Considerations of the Code of

Professional Responsibility of the American Bar Association, judicial proceedings must "be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings . . . ." The personal animosities of litigants must not be reflected in the "conduct, attitude, and demeanor" of legal counsel toward other attorneys, witnesses and the Court; personal references to witnesses, opposing counsel or the Court and "(h)aranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system," EC7-37.

As the Supreme Court stated in the context of a criminal trial in Illinois v. Allen, 397 U.S. 337, 343, rehearing denied, 398 U.S. 915 (1970), "(i)t is essential to the proper administration of . . . justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated." Just as "trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case," so all the more must the Court vigorously constrain counsel from engaging in conduct which undermines the "dignity, order, and decorum" necessary to the due administration of judicial proceedings, id.

These principles were recognized by the Supreme Court in In re Isserman, 345 U.S. 286, 289 (1953), wherein the court stated as follows:

> There is no vested right in an individual to practice law. Rather there is a right in the Court to protect itself, and hence society, as an instrument of justice. That to the individual disbarred there is a loss of status is incidental to the purpose of the Court and from its rolls one who has engaged in conduct inconsistent with the standard expected of officers of the Court.

Thus, as the Court of Appeals for the Seventh Circuit observed in In re Echeles, 430 F.2d 347, 350 (7th Cir. 1970),

> the real question at issue in a disbarment proceeding is the public interest and an attorney's right to continue to practice a profession imbued with public trust. In re Fisher, 179 F.2d 361 (7th Cir. 1950), cert. denied sub nom. Kerner, et al. v. Fisher, 340 U.S. 825, 71 S.Ct. 59, 95 L.Ed. 606 (1950).

To insure an orderly and expeditious resolution of this litigation, the Court directed the attention of legal counsel for both parties to the provisions of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the Local Civil Rules of the United States District Court for the Northern District of Ohio in its Initial Order of September 11, 1978 and again during the final pretrial conference conducted in this action on December 12, 1978, and, in particular, at the commencement of the trial, reviewed and orally stated to counsel the specific requirements of this Court's Order No. 9-24-76, styled Courtroom Procedure, which prescribes, inter alia, the manner in which counsel shall conduct the examination and cross-examination of witnesses, and the standards of conduct and decorum by which counsel shall abide throughout the trial. (A copy of the relevant portions of Order No. 9-24-74 is attached hereto as exhibit A).

Nonetheless, despite the Court's efforts to acquaint counsel with these procedural requirements prior to trial, and the Court's repeated requests, admonitions, and orders to Schulman throughout the course of the week-long trial to conform with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules of the United States District Court for the Northern District of Ohio, and the requirements and orders of this Court, Schulman persisted in his wilful disregard of the most elementary standards of professional conduct in a calculated effort to disrupt and obstruct the resolution of this litigation, as more particularly set forth hereafter. Schulman's conduct is all the more reprehensible because it was flagrantly and wilfully intended to publicly obstruct and discredit judicial proceedings, thereby depriving the litigants of their right to an orderly and objective resolution of their dispute, which action required the Court's immediate response to this demonstrated unprofessional behavior. See Koden v. United States Dept. of Justice, 564 F.2d 228 (7th Cir. 1977); Matter of Abrams, 521 F.2d 1094 (3rd Cir.), cert. denied sub nom. U. S. Dist. Court for the Dist. of N. J. v. Abrams, 423 U.S. 1038 (1975); Feldman v. State Board of Law Examiners, 438 F.2d 699 (8th Cir. 1971); In re Carroll, supra; Flaska v. Little River Marine Constr. Co., 389 F.2d 885 (5th Cir. 1968); In re Rhodes, 370 F.2d 411 (8th Cir. 1967); Mattice v. Meyer, 353 F.2d 316 (8th Cir. 1965), cert. denied, 389 U.S. 820 (1967).

Unlike ordinary disbarment proceedings, resulting from third party grievances, or similar type conduct necessitating the evolution of an evidentiary basis upon which to insure an informed appellate review, the case at

bar arises from a course of conduct pursued by Schulman in the presence of the Court, the jury, and the public during the trial of this case, which conduct is fully and accurately demonstrated, recorded and disclosed in reviewable form by the transcript of the record of the proceedings. No single incident or combination of incidents taken out of the context of the record in its entirety, including three separate findings of contempt against Schulman during the trial, can more precisely convey his total demonstrated disregard for the Federal Rules of Civil Procedure, the Rules of the United States District Court for the Northern District of Ohio, Ethical Considerations of the American Bar Association Code of Professional Responsibility, and the rules, requests, admonitions and Orders of the trial court. It is upon that reviewable record, in its entirety, that the Court anchors its findings of fact and conclusions of law. See In Re Carroll, 416 F.2d 585 (10th Cir. 1969) (per curiam), cert. denied, 396 U.S. 1011 (1970). Immediately upon the submission of the case to the jury for its deliberation and judgment, but prior to the verdict, the Court conducted a hearing wherein Schulman was afforded, after written notice, an opportunity to show cause why his name should not be stricken from the roll of attorneys authorized to appear and engage in the practice of law before the United States District Court for the Northern District of Ohio, pursuant to the local rules of the Court and in conformity with the pronouncements of the Supreme Court in In re Isserman, supra, and In re Ruffalo, 390 U.S. 544, rehearing denied, 391 U.S. 961 (1968), quoting and following Randall v. Brigham, 7 Wall. 583, 540 (1868):

> It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.

A review of the record discloses that Schulman knowingly and wilfully pursued a course of conduct both prior to and throughout the trial of this cause designed and calculated to disrupt the orderly resolution of this litigation, as follows:

1. The final pretrial hearing scheduled for December 11, 1978, pursuant to the Court's Order of October 31, 1978 was required to be aborted and rescheduled because Schulman, at the hearing, advised the Court that he had disregarded the Court's Order of September 11, 1978 and had:

(a) failed to identify, mark and exchange proposed exhibits with opposing counsel on November 29, 1978 as ordered by the Court;

(b) failed to inform opposing counsel on November 29, 1978 of testimony intended to be introduced at trial by way of deposition as ordered by the Court;

(c) failed to file with the Court by not later than

December 11, 1978 a sequential index listing all documentary and non-documentary exhibits intended to be used at trial as ordered by the Court;

(d) failed to identify, mark and file with the Court and opposing counsel by not later than December 11, 1978, exhibits intended to be used at trial as ordered by the Court;

(c) failed to consult with opposing counsel prior to December 11, 1978 to eliminate duplicate exhibits;

(f) failed to prepare and file with the Court prior to December 11, 1978 a witness list as ordered by the Court;

(g) failed to inform the Court and opposing counsel by not later than December 11, 1978 of an intent to introduce testimony by way of deposition as ordered by the Court;

(h) generally, intentionally and deliberately ignored, without reason, every pretrial Order of the Court intended to facilitate an orderly and efficient trial.

2. Throughout the opening and closing arguments and interrogation of witnesses by opposing counsel, Schulman persisted in calculated efforts to distract the attention of the Court and the jury by:

(a) unnecessary and noisy activity at counsel table and roaming about the courtroom;

(b) standing at counsel table;

(c) shuffling papers, books, and documents;

(d) conferring with his clients in tones audible to the judge and jurors; and

(e) repeatedly ignoring the Court's requests and instructions to cease and desist in this misbehavior.

3. The respondent persisted in advancing comments, statements and arguments at side-bar conferences in audible tones calculated to reach the jury, accompanied by

facial expressions and gestures intended to be observed by the jury, in disregard of the Court's requests, admonitions, and orders to refrain from such conduct.

4. The respondent persisted in directing leading questions to his own defense witnesses, indifferent of the requirements of the Federal Rules of Evidence and the repeated requests and instructions of the Court.

5. The respondent persisted in framing questions, both on direct and cross-examination, incorporating suggestions, innuendos, and/or insinuations accompanied by vocal inflections in a manner calculated to influence or prejudice the jury, ignoring the Court's numerous requests, admonitions and orders to cease and desist.

6. The respondent persisted in interrupting witnesses, thereby precluding them from completing answers, repudiating the Court's requests, admonitions and orders.

7. The respondent persisted in interrupting opposing counsel in his direct and cross-examination of witnesses by interposing objections before questions were completed, in disregard of the Court's requests, admonitions, and orders to Schulman to state his objections in the proper manner and at the appropriate time.

8. The respondent persisted in asking multiple questions in the form of a single interrogatory to the confusion of witnesses, rejecting the Court's requests, admonitions and orders to proceed in a proper manner.

9. The respondent persisted in pursuing repetitious avenues of inquiry, despite the Court's numerous instructions to refrain from such practice.

10. The respondent persisted in stating or alluding to matters obviously irrelevant to the cause, or matters which

could not be supported by admissible evidence, in disregard of the Court's requests to comply with the Federal Rules of Evidence and the rules of the Court.

11. The respondent persisted in pursuing avenues of inquiry having no basis in admissible evidence and designed solely to embarrass and demean witnesses and to influence and prejudice the jury.

12. The respondent demeaned and disparaged the plaintiff and her witnesses by incorporating into questions conclusory statements and suggestions of his personal opinion as to the justness of the cause, the credibility of witnesses, and the culpability of the plaintiff and her witnesses, and by conducting his interrogation in a loud and provocative manner accompanied by expressions and gestures, ignoring the Court's repeated requests, admonitions, and orders to conduct courteous, proper and probative examination of witnesses.

13. The respondent persisted in attempting to engage in unnecessary dialogue with witnesses, opposing counsel, and the Court in the presence of the jury, in disregard of the Court's requests, admonitions and orders to cease and desist.

14. The respondent persisted in advancing provocative arguments following rulings by the Court upon objections, despite the Court's repeated instructions to cease and desist.

15. The respondent exhibited and admitted complete unpreparedness and disorganization, as well as unfamiliarity with identified exhibits and references thereto, resulting in inordinate delays in the trial and the necessity of conducting voir dire examination of several defense

witnesses.

16. The respondent repeatedly advanced specious motions and arguments, unsupported by legal authority, and demanded that the Court respond thereto. For example, Schulman purported to reserve presentation of voir dire questions to the jury panel until the conclusion of all the evidence; he requested a directed verdict upon concluding direct examination of his first defense witness and prior to cross examination; he moved to instruct the jury that the standard of proof in 42 U.S.C. §1981 cases was proof beyond a reasonable doubt, rather than a preponderance of the evidence; and he steadfastly argued that equitable and declaratory relief, as distinguished from damages, could properly be awarded by a jury rather than the Court.

17. The respondent engaged in factitious outbursts in a loud and bellicose manner calculated to prejudice the jury, such as his irascible demands for a mistrial in the presence of the jury, and his agitated demand that the jurors be ordered from the courtroom so that he could present additional arguments and motions.

18. Schulman fell asleep during the lengthy voir dire examination of the plaintiff's deposition, prompted by his untimely demand to read the testimony to the jury.

19. The respondent intentionally misread and misquoted the deposition of a witness, David Gelzer, during Gelzer's voir dire examination, in an effort to embarrass the witness and mislead the Court.

20. Schulman's continuous provocative outbursts, and quarrelsome interruptions of witnesses, the Court, and opposing counsel necessitated repeated removal of the

jurors from the courtroom in order to accommodate his agitated emotionalism and to avoid contamination of the jury.

The Court finds, upon the record in its entirety, that Schulman's conduct preliminary to and throughout the trial of this case not only demonstrated a total disregard for fundamental standards of professional courtesy, competence, and deportment, but reflected a calculated and wilful endeavor to subvert the orderly procedures mandated by the rules and orders governing the practice of law in this Court, necessary for the due administration of justice. Schulman's actions, individually and collectively, demonstrated disregard for the mandatory Ethical Considerations of the American Bar Association Code of Professional Responsibility, and in particular constituted flagrant violations of the Code's Disciplinary Rule 7-106(C), which prescribes standards of professional conduct for participation in judicial proceedings, as follows:

> (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:
>
> (1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.
>
> (2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.
>
> (3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.
>
> (4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the

guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

In view of the gravity of Schulman's conduct and his fundamental lack of concern for the minimum requisite standards of professional deportment, the Court concludes that it would be remiss in its obligations to the Bar and to the public if it countenanced such professional misbehavior on the part of a member of its Bar without censure. To the extent that Schulman's conduct during this trial is attributable to his demonstrated lack of knowledge of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules of the United States District Court for the Northern District of Ohio, and the rules and Orders of this Court, the Court is desirous of affording to Schulman an opportunity to educate himself with the standards of professional deportment and competence requisite to membership in the Bar of the United States District Court for the Northern District of Ohio.

Accordingly, it is hereby ORDERED that Milton Phillip Schulman is suspended from practicing law and/or appearing before the United States District Court for the Northern District of Ohio for a period of not less than two

(2) years from the date of this Order, and thereafter until such time as he has:

1. satisfactorily demonstrated to this Court a proficiency and understanding of the Fed. R. Civ. P., Fed. R. Evid., L. Civ. R. for Northern District of Ohio, the rules and Orders of this Court and the Ethical Consideration of the American Bar Association Code of Professional Responsibility;
2. satisfactorily demonstrated an abiding commitment to conduct himself in a manner commensurate with the Ethical Consideration of the American Bar Association of Professional Responsibility;
3. presented to this Court certification that he has, after the date of this Order, satisfactorily completed a course of study conducted by an accredited law school in the following subjects[1]:
   (a) Evidence — minimum three (3) hours
   (b) Federal Rules of Evidence — minimum four (4) hours
   (c) Federal Practice and Procedure, including Fed. R. Civ. P. — six (6) hours

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[1] Academic requirements conform with minimum uniform standards of competency for admission of attorneys to practice in federal trial courts as recommended by the American Bar Association for adoption by the Judicial Conference of the United States (minimum credit hours imposed by Court). Accredited qualifying courses of study are available at both Case Western Reserve University School of Law (CWR) and Cleveland State University School of Law (CSU), i.e. CWR academic offerings (a) Evidence — 3 hours, (b) Evidence for Litigators — 4 hours, (c) Civil Procedure 1 — 3 hours, (d) Civil Procedure 2 — 3 hours, (e) Criminal Law and Procedure — 3 hours, (f) Trial Advocacy — 4 hours, (g) Professional Responsibility — 2 hours.

(d) Criminal Law and Procedure, including Fed. R. Crim. P. — minimum three (3) hours

(e) Trial Advocacy — minimum four (4) hours

(f) Professional Responsibility — minimum two (2) hours

(g) actual attendance and participation, as certified by a member of the Bar of the United States District Court for the Northern District of Ohio, in four experiences of some combination of contested testimonial trials in a federal court of record under the supervision of an experienced trial lawyer admitted to practice before a federal trial court.

IT IS SO ORDERED.

(signed) Robert B. Krupansky
United States District Judge

Exhibit "A"

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
Filed September 24, 1976

In Re:)
COURTROOM PROCEDURE) **ORDER**
ORDER NO. 9-24-76

KRUPANSKY, J.

The rules and procedures delineated in this Order are intended to familiarize counsel with the procedures to be implemented in the trial of actions before this Court. This Order is designed to aid and assist counsel in preparation and orderly presentation of cases to the Court.

Preparation is the keystone for obtaining justice. Courts and the Bar are charged with the duty to efficiently utilize the time and effort of juries, witnesses, and the parties, and to effectively advance the administration of justice through trial practices that afford a clear exposition of facts and issues. These procedures are designed to accomplish this result by expediting the orderly administration of justice without impeding, in any way, counsel's ability as an advocate to fully and fairly represent the client's interest.

COUNSEL SHALL AT ALL TIMES CONFORM TO AND DISPLAY THE HIGHEST DEGREE OF PROFESSIONAL CONDUCT BEFORE THE JURY AND THE COURT DURING THE COURSE OF ANY TRIAL OR PROCEEDING. ALL

TRIALS AND PROCEEDINGS BEFORE THE COURT SHALL BE IN ACCORDANCE WITH THE FEDERAL RULES OF EVIDENCE (FED. R. EVID.).

OPENING STATEMENTS

Opening statements of counsel shall be limited to a brief summary of the proof anticipated by the respective parties.

A. Opening statements shall be confined to the time period allotted by the Court; and

B. Counsel shall not, during Opening Statements, indulge in expositions of the law or in matters of argument or statements more appropriately reserved for closing argument.

INTERROGATION OF WITNESSES

Counsel shall at all times address the jury and the Court from a standing position.

Counsel shall conduct all interrogation of witnesses and/or arguments to the Court from the lectern positioned in the courtroom. Counsel shall not leave the lectern during the interrogation of any witness for any purpose without express permission from the Court.

A. Counsel shall inform the Court Attache of the name of the witness to be summoned from the witness room.
   1. The Court Attache shall summon the witness;
   2. The Court Attache shall administer the oath to the witness.

B. COUNSEL SHALL NOT ENGAGE IN DIALOGUE OR

ARGUMENT WITH THE COURT, OPPOSING COUNSEL OR A WITNESS AT ANY TIME IN THE PRESENCE OF THE JURY.

C. Counsel shall extend every courtesy to all witnesses appearing before the Court.

D. Counsel shall conduct interrogation of witnesses by directing a series of simple, precise, probative and proper questions to the witness.
   1. Multiple questions shall not be incorporated into a single question;
   2. Questions directed to witnesses shall not be characterized by inclusion of conclusory and/or argumentative statements;
   3. Protracted statements directed to witnesses in lieu of questions shall not be permitted;
   4. Questions designed to confuse a witness shall not be permitted;
   5. Repetitious questions shall not be permitted;
   6. Counsel shall avoid questions incorporating suggestions and/or insinuations;
   7. Counsel shall not by any action, expression, or inflection indicate disbelief or other emotional display as a result of an answer articulated by a witness;
   8. Counsel shall avoid theatrics and emotional displays of any kind.

E. Opposing counsel shall permit interrogating counsel to complete the question directed to the witness before interposing an objection, if any:
   1. To interpose an objection to any question, counsel will rise and simply state "objection";

(a) Counsel shall not proffer any reason or explanation for the objection.

(b) Counsel may explain or support any objection on the record by requesting permission of the Court to "approach the bench".

(c) The Court's ruling upon any objection is final and counsel shall not persist in further argument thereon but shall forthwith proceed with the interrogation by directing another question to the witness.

F. Interrogating counsel shall not interrupt the answer articulated by a witness:

1. In the event that an answer is not responsive, the Court may, upon objection or sua sponte, order the witness to respond;
2. Interrogating counsel may request permission to "approach the bench" for the purpose of placing an objection upon the record and to request the Court to order the witness to properly respond.

G. Counsel shall be fully prepared and organized to interrogate each witness called; unnecessary delays prompted by paper shuffling or other reasons will not be permitted.

H. Counsel shall not place brief cases, models, exhibits or other articles which may deface the furniture on counsel table.

I. Smoking, beverages, or food of any description shall not be permitted in the courtroom or any part thereof.

J. Counsel may at any time request permission to "approach the bench", for any purpose whatsoever.

K. Interrogating counsel shall indicate to the Court the completion of the examination of any witness. The Court will thereupon advise opposing counsel to proceed.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:)
MILTON SCHULMAN) **NOTICE OF HEARING**
) **AND ORDER**

TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HON. ROBERT B. KRUPANSKY, JUDGE OF SAID COURT, ON WEDNESDAY, DECEMBER 20, 1978, AT 1:45 O'CLOCK P.M.

PRESENT:

Mr. Milt Schulman
748 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

Mr. Avery S. Friedman
Mr. David L. Hoehnen
706 Citizens Building
Cleveland, Ohio 44114

Mr. Donald J. Kindt
United States Marshal
323 U.S. Court House
Cleveland, Ohio 44114

WEDNESDAY, DECEMBER 20, 1978, 1:45 P.M.

THE COURT: Gentlemen, — I should say Mr. Schulman, the Court has considered additional matters concerning this case and they relate to your conduct during the course of the entire proceeding.

I have scheduled this hearing this afternoon while the case is still in progress to afford you, while everything is

fresh in your mind, the opportunity of conveying to this Court why it should not order your name to be stricken from the rolls of attorneys authorized to appear before and engage in the practice of law in the United States District Court for the Northern District of Ohio. The action is predicated upon your conduct as demonstrated by the proceedings before this jury, this Court, the parties, opposing counsel, and all of those individuals, members of the public, who appeared here during the course of this trial.

Sir, you are free to proceed and in whatever manner you are desirous at this hearing.

MR. SCHULMAN: May I?

(Thereupon Mr. Kindt, United States Marshal, handed a certified copy of the Court's Notice of Hearing and Order to Mr. Schulman.)

MR. SCHULMAN: Your Honor, at 12:35 approximately, after the jury — after the Court had sent the jury in to chambers, I was presented with this Notice of the Hearing and an Order.

Every statement made by the Court in this Order is not true. There is no question that this Court has not only abused me during this trial, but it goes back to April of 1978 when I appeared before this — in the chambers — in the office of this Court and requested an opportunity to speak to this Judge; and I was interrogated by a law clerk who wanted to know what the purpose of my conversation was with this Judge.

I told the law clerk that I wanted to discuss with the Judge the possibility of him setting up a hearing in which he might consider, in the presence of the City of Cleveland,

which was a party of the action against CEI, which this Court was — had under his jurisdiction, and the presence of the attorneys for CEI, to discuss a possibility of an assignment of the judgment liens in the amount of $18 million to me and my principals.

This Court evidently has trained these two gentlemen to be contemptible and contemptuous of other people who come into the Court — into the office to talk to the Judge; and he proceeded to ask me what I was doing and what it was all about.

I told him I came to see the Judge; if he wanted to speak to me, he would call me, please have him call me. And this gentleman said to me, "Why, you don't show deference to the Court."

And I told him, I says, "My friend, I show respect to all judges. I show deference to no one."

Now, I says, "Will you please ask the Court if he will call me to set up an appointment?"

There was nothing ex parte about my appearance in that courtroom. It was in the interests of helping the City of Cleveland to get over a great difficulty that was presented to it by the Court by reason of his unjudicial ruling.

Now, after I left, this Court didn't call me, and this Court didn't give me — afford me an opportunity to discuss my appearance there, or why I appeared there, or what I was doing there. But he immediately called counsel for the City of Cleveland and proceeded to dress him out and said that, "I don't want Schulman around here, Milt Schulman," not the attorney — the Law Director, and then proceeded to call in a court reporter and make a record on the statements made by his contemptible law clerks — which

were untrue — about my appearance there; and had that transcript — had that Order written up and transcribed and put under seal and filed in that case.

I didn't learn about that until just about the time I started to represent the Kinzels.

THE COURT: Well then, the lawyer for the City misrepresented to the Court; because, at that time, he advised the Court that he had taken the matter up with your sons and had assured the Court that nothing further would occur.

MR. SCHULMAN: Nobody took any matter up with me. I'm the gentleman that's involved here, not my son, not the lawyer, not anybody else.

THE COURT: Mr. Schulman, —

MR. SCHULMAN: Now, I want to continue on with my defense —

THE COURT: — keep your voice down, please, Mr. Schulman.

MR. SCHULMAN: Well, I want to continue on —

THE COURT: Stop shouting.

MR. SCHULMAN: — with my defense of this phony Order that you have written.

THE COURT: Very well.

Proceed.

MR. SCHULMAN: When I learned that that event happened and that this Court didn't even give me the courtesy to call me to ask me whether his law clerks were telling the truth or not, — and I was representing the Kinzels, — and after I had a hearing in this court, —

THE COURT: Are you saying you were representing the Kinzels way back in March?

MR. SCHULMAN: No; I didn't hear about this until —

THE COURT: All right.

MR. SCHULMAN: And that didn't come to me through my son or Mr. Norris.

THE COURT: Proceed.

MR. SCHULMAN: I have sources of information around the whole country.

THE COURT: Proceed. I'm sure you do.

MR. SCHULMAN: Now, when I heard that, — and, at that time, I was representing the Kinzels, and I appeared before this Court, I think, on a motion. I decided then that I better talk to the Court and see whether, on the basis of what he did, — which I consider unjudicial and wrong and discriminatory and biased — I called you, the Court, and I asked you, I says, "Tell me something: I heard that this happened. Did it happen?"

And you told me, "Yes, we did that."

I says, "Can you tell me whether you can rule judiciously in this case on the basis of the fact that you did not inform me or call me —" this is no joke, your Honor, —

THE COURT: Mr. Schulman, as I recollect, I disengaged that conversation and said nothing to you.

MR. SCHULMAN: You hung up on me in the midst of that conversation.

THE COURT: At the beginning of it, when I found out —

MR. SCHULMAN: No, not at the beginning, —

THE COURT: Stop hollering.

MR. SCHULMAN: — at the end.

THE COURT: Please stop shouting.

MR. SCHULMAN: Now, I want to continue —

THE COURT: Stop shouting, please.

MR. SCHULMAN: — an opportunity to continue.

THE COURT: Very well.

Proceed.

MR. SCHULMAN: All right.

THE COURT: Don't get emotional.

MR. SCHULMAN: All right.

THE COURT: Just relax.

MR. SCHULMAN: I'm not emotional.

THE COURT: Stop shouting.

MR. SCHULMAN: This is the way I speak, your Honor. You've told me to stop shouting for seven or eight days. I speak this way.

THE COURT: Mr. Schulman, we have a courtroom full of people here.

MR. SCHULMAN: Well, if you want me to, I'll go in the back of the room if it bothers you.

THE COURT: Keep your voice down, please.

MR. SCHULMAN: All right.

THE COURT: I don't have a hearing impediment, sir.

MR. SCHULMAN: Well, I — this is the way I speak, period, and everybody knows that. I don't whisper; I have no secrets.

THE COURT: Please, let's proceed.

MR. SCHULMAN: Now, I called you, and you

hung up on me, and then you had your — Mr. Kennedy call me and say, "Look, Mr. Schulman, file an affidavit of prejudice."

And I thought: Well, maybe we had a Judge that might be showing a little judicial temperament and maybe if his clerk told me that you told him to have me file an affidavit of prejudice, that you would then withdraw from the case and give my client a proper forum.

But that didn't happen. I filed the affidavit of prejudice at the request of your law clerk; and all of a sudden you came through with a ruling that you denied the affidavit of prejudice. So we came to trial.

Now, I have been practicing law in this state for a long time, and I have been practicing law in the Federal Courts of this district, including the Court of Appeals in Cincinnati.

Now, in answer to your Notice of Hearing and Order.

Throughout the prosecution of Civil Action No. C78-1169, styled Barbara Ford v. Ken Kinzel, I did not knowingly and intentionally comport myself in an unprofessional manner designed and calculated to frustrate, delay, and demean the orderly process of justice and administration of the Court, in deliberate disregard of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the United States District Court for the Northern District of Ohio, and the specific rules and Orders of this Court; and did not, despite any repeated requests, admonitions, and Orders of the Court, persist in an irresponsible course of conduct which obstructed, delayed, and demeaned the due administration of justice and orderly conduct of this Court's business.

In no instance did I do any of the foregoing. But this Court — this Court, by his erroneous rulings, in error of the laws of the state, denied my clients due process; denied me the opportunity of presenting evidence that was relevant to this case and would support him.

This Court is the one that frustrated and delayed and demeaned and denied my clients from due justice. It's this Court that's guilty, and it's this Court that should be removed from the bench for his activity and actions in this case, which I will prove by the record. At no time did I violate any rule or any order — or any responsible order of this Court. This Court deliberately suppressed and obfuscated the evidence that we felt was necessary to present on behalf of my clients. And in spite of that, I can guarantee you: This jury is coming in with a decision in favor of my clients in spite of your activities.

Now, it's high time that this Court start to recognize that people have a right to a trial; they have a right to due process, and they have a right to have a judicial determination and have all the evidence that is necessary to prosecute their case presented to the jury.

Now, I'm going to ask for a formal hearing on this. I'm also going to order a record of this case; and only through the record will we be able to determine who was the gentleman that's guilty of defeating the process of justice in this case.

THE COURT: Is there anything further you would like to say, Mr. Schulman?

MR. SCHULMAN: I have a lot of things to say, —

THE COURT: You're free —

MR. SCHULMAN: — but I have not been —

THE COURT: You're free to say whatever you —

MR. SCHULMAN: Well, I am; but I can defer till we have a formal hearing.

THE COURT: Well, the Court will proceed on the record as recorded during the entire course of this trial. There is no necessity for rehashing the record and what transpired therein.

The record will speak for itself. And this will be the opportunity that you are being given to say whatever you are desirous of saying, doing whatever you're desirous of —

MR. SCHULMAN: This is no opportunity. I demand a hearing —

THE COURT: You're getting it.

MR. SCHULMAN: — and I — I'm not getting it. This is no hearing.

THE COURT: Anything further?

MR. SCHULMAN: This is an ex parte — what the hell do you call it —

THE COURT: Please, let's refrain from profanity.

MR. SCHULMAN: Well, there's an old saying by this judge out west, he says, "Let's go into the trial, let's get on with the hanging," you know.

THE COURT: Anything further?

MR. SCHULMAN: At the present time, no, your Honor; but I do demand a proper hearing.

THE COURT: You're getting a hearing.

MR. SCHULMAN: No, I'm not getting a hearing, and you know it.

THE COURT: Please don't shout, Mr. Schulman.

MR. SCHULMAN: Well, I'm telling you, I'm not getting a hearing, and you know it.

THE COURT: The matters are fresh in your mind, the Court stands on the record, and we will decide the case on the record.

If there is nothing further, —

MR. SCHULMAN: Let's get the record and — I want that record written up —

THE COURT: If there's nothing further to say, —

MR. SCHULMAN: — before any — before any hearing or any ruling is made by you; and I —

THE COURT: If there is —

MR. SCHULMAN: — and I demand that.

THE COURT: If there is nothing further, Mr. Schulman, we will recess this hearing until — I will recess the trial until such time as the jury has a verdict, to determine whether or not the jury had arrived at a verdict.

Everything that transpired in this case is a matter of record, —

MR. SCHULMAN: That's right.

THE COURT: — including this Court's ruling as to your affidavit of prejudice; and the Court will stand on the record, and you may stand on the record.

MR. SCHULMAN: And including this Court's behavior in this case.

THE COURT: Thank you, Mr. Schulman.

CERTIFICATE

I, Nicholas M. Czompoly, Official Court Reporter in and for the District Court of the United States for the Northern District of Ohio, Eastern Division, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings herein.

(signed) Nicholas M. Czompoly
Official Court Reporter

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BARBARA FORD,	)	
Plaintiff,	)	
vs.	)	Civil Action
KEN KINZEL, et al.,	)	No. C 78-1169
Defendants.	)	Judge Robert B. Krupansky

TRANSCRIPT OF EXCERPTS OF PROCEEDINGS HAD BEFORE THE HONORABLE ROBERT B. KRUPANSKY, JUDGE OF SAID COURT, AND A JURY, ON THURSDAY, DECEMBER 14, 1978.

APPEARANCES:

On behalf of the Plaintiff:

Mr. Avery S. Friedman
Mr. David L. Hoehnen
706 Citizens Building
Cleveland, Ohio 44114

On behalf of the Defendants:

Mr. Milt Schulman
748 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

* * * * * * *

MR. FRIEDMAN: Your Honor, at this time the Plaintiff, subject to consideration of exhibits which we have proferred, rests.

THE COURT: Very well.

Approach the bench, gentlemen.

(Thereupon the following proceedings were had at the bench out of the hearing of the jury.)

THE COURT: Mr. Schulman?

MR. SCHULMAN: I move for directed verdict.

THE COURT: Would you like to state the reason, please?

MR. SCHULMAN: There is no evidence that at any time — do you want the jury to leave?

THE COURT: No. Go ahead.

MR. SCHULMAN: There was no evidence at any time that the Plaintiff in this case was refused an opportunity to rent.

There is no evidence at this time that the property was on the market available to anyone.

There is no evidence that any deposits were made.

The only evidence in this case is that an ad was placed in the paper seeking prospective tenants for a place that was going to be — possibly going to be vacant and then put on the market. That's the evidence. And on that basis it was not on the open market for listing. It was an advertisement saying, "If you like the house, come look at it. And if you're interested in it, we'll talk about it."

That's the testimony.

Mrs. Ford testified that she looked at the house. There is no evidence by her or Mrs. Janes that there was an offer to take it or a refusal.

Now, if the Court is talking about inflections and innuendoes, it was a figment of her imagination Mrs. Kinzel told her when she said — and the testimony was that Mrs.

Kinzel just says, "Look at it. If you like it, we'll talk to you."

THE COURT: Very well.

MR. SCHULMAN: That's it.

THE COURT: Are you desirous of responding?

MR. FRIEDMAN: Very briefly, your Honor. The substantive elements, the basic elements in establishing a prima-facie case have been established by the evidence.

First of all, that the house was placed on the market.

Secondly, that the Plaintiff was attempting to secure housing; in fact, made no less than three separate efforts directly with the Defendant to put down a deposit, otherwise seek to rent the property. That representations were made to the Plaintiff, who was black, that such opportunities were unavailable. That representations through the independent testimony of witnesses who had direct contact, — unrebutted by the Defendant — were told that such housing was available. And, specifically one individual, Bernice McGovern, was specifically offered the opportunity to rent the premises for $400 a month, and $400 to hold the premises.

Construing the evidence most favorably to the Plaintiff, who is opposing the motion, we believe the motion for directed verdict should be denied at this point.

THE COURT: Gentlemen, both of your statements are generalizations.

At this point in time there remains before the Court two issues: Namely, discrimination arising as a result of Title 42, Section 1981, and Title 42, Section 1982.

Considering each independent of the other, at this point in time, construing the evidence most favorably to the

Plaintiff, the motion as to both is overruled.

However, the Court does recognize at this time that as to as least 42 U.S.C. 1982, the evidence is tenuous in the sense that there is testimony that the premises were not available at this time. It is contradicted.

However, if it should develop through further evidence — and it appears to me that somebody is going to offer a lease which would indicate a tenancy between April, '78 to April, '79 — if it should develop during the course of the Defendants' case that the premises in fact were not available, and would not be available either to white persons or to black persons, there could be no discrimination under 1982.

As to Title 42, Section 1981, which is broad in its terms, there could remain a violation which the Court must determine. The evidence, at least in this point of time, there is testimony that this lady was treated differently from white persons as relates to the security deposit, at least testified to by Mrs. McGovern.

Should that remain a controversial point, the case may very well go to the jury on that single issue. But I must await the development of the evidence.

I think that I have adequately defined the Court's position and, at this time, Mr. Schulman, your motion as to both issues, the one under Title 42, 1981 is overruled, as well as 1982, subject to the renewal of the motion at the appropriate time.

CERTIFICATE

I, Nicholas M. Czompoly, Official Court Reporter in and for the United States District Court for the Northern District of Ohio, Eastern Division, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings herein.

(signed) Nicholas M. Czompoly
Official Court Reporter

CROSS-EXAMINATION OF BERNICE McGOVERN

By Mr. Schulman:

* * * * * * *

Q And didn't Mr. Friedman question each one of you witnesses in a manner in which Mr. Schulman would question you on the stand when you got on the stand?

MR. FRIEDMAN: Objection.

THE COURT: Overruled.

A Yes.

Q And after you gave the answer that was supposed to be the question by Mr. Schulman, weren't you told to correct it a little bit so that the testimony would come out a little better in favor of —

A No.

Q No, huh?

A No; we were told to tell the truth.

Q Naturally you're told to tell the truth.

THE COURT: Sustain the objection.
The jury will disregard that remark.
Approach the bench.

(The following proceedings were had at the bench out of the hearing of the jury.)

THE COURT: Mr. Schulman, is there any reason why I shouldn't hold you in contempt?

MR. SCHULMAN: Certainly. I did nothing contemptuous.

THE COURT: Very well.

The Court finds you in contempt of court.

You are fined $250.00.

Please proceed back to your seat.

* * * * *

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BARBARA FORD, Plaintiff,	)	
vs.	)	Civil Action No. C 78-1169
KEN KINZEL, et al. Defendants.	)	Judge Robert B. Krupansky

TRANSCRIPT OF EXCERPTS OF PROCEEDINGS HAD BEFORE THE HON. ROBERT B. KRUPANSKY, JUDGE OF SAID COURT, AND A JURY, ON FRIDAY, DECEMBER 15, 1978.

APPEARANCES:

On behalf of the Plaintiff:

Mr. Avery S. Friedman
Mr. David L. Hoehnen
706 Citizens Building
Cleveland, Ohio 44114

On behalf of the Defendants:

Mr. Milt Schulman
748 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113

FRIDAY, DECEMBER 15, 1978, 9:10 O'CLOCK A.M.

* * * * * * *

VIRGINIA L. DAVIS,

of lawful age, called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF VIRGINIA L. DAVIS

By Mr. Schulman:

* * * * * * *

Q Mrs. Davis, did you discuss and make any arrangements to rent the place to Mrs. Ford the first time you spoke to her?

A Yes.

Q Did you discuss the conditions of renting it to her?.

A I don't understand "the conditions", what you mean by "the conditions"?

THE COURT: Gentlemen, approach the bench.

(Thereupon the following proceedings were had at the bench out of the hearing of the jury.)

THE COURT: Mr. Schulman, so far, none of this testimony is proper.

MR. SCHULMAN: Your Honor, there is a lease here. I want to talk about whether there is a lease or a month-to-month rental; that is a term of condition.

THE COURT: I'm telling you, Mr. Schulman, at this point in time, the testimony thus far elicited is improper unless you lay a proper foundation, and I'm not going to permit you to proceed.

MR. SCHULMAN: Well, asking about the terms and conditions would be either a monthly or a lease, a monthly rental or a lease.

THE COURT: I'm not precluding you from the examination, —

MR. SCHULMAN: Well, that's exactly what you're doing.

THE COURT: Would you kindly stop interrupting me?

Kindly stop interrupting me, Mr. Schulman. I'm not going to preclude you from proper examination, providing you lay a proper foundation. All I'm saying to you, sir, is you have failed to do so.

Now, shall we proceed?

MR. SCHULMAN: Yes. I didn't do anything but disagree with you.

THE COURT: Very well. Your disagreement is noted.

Shall we proceed?

MR. SCHULMAN: Right.

(The foregoing proceedings were had out of the hearing of the jury.)

JUROR NO. 7: May I have my coat?

THE COURT: Absolutely. Are you chilly?

JUROR NO. 7: Yes, I am.

THE COURT: Well, Mr. Schuck, will you kindly call the GSA and see if we can get some response?

You know, that's a problem, but we will certainly try, and, Mr. Kennedy, you go — why don't you go and get it (addressing Juror No. 7).

JUROR NO. 7: Thank you.

THE COURT: And we'll suspend our hearing here just temporarily until you get it.

(Thereupon Juror No. 7 steps into the jury room to get her coat.)

THE COURT: We have an ideal system here: It's either too hot or too cold.

(Thereupon Juror No. 7 returns to the courtroom.)

JUROR NO. 7: Thank you.

THE COURT: Fine.

You may proceed, Mr. Schulman.

By Mr. Schulman:

Q Mrs. Davis, was your rental agreement with her on a monthly basis or on the basis of a lease?

THE COURT: Sustain the objection, Mr. Schulman.

I have told you that you must lay a proper foundation before you can proceed with this questioning.

Q Are you the owner of that property?

A Yes.

MR. SCHULMAN: May I have Exhibit J?

Mr. Kennedy, will you hand that to the young lady?

THE COURT: Mr. Schulman, — gentlemen, approach the bench.

(Thereupon the following proceedings were had at the bench out of the hearing of the jury.)

THE COURT: Mr. Schulman, I have told you that before you can proceed with this line of questioning, you must lay a proper foundation. I don't know what more I can tell you.

MR. SCHULMAN: I don't know what you want. I haven't the least idea what you want.

THE COURT: Lay a proper foundation.

She's the landlady, Mr. Schulman. I'm not here to instruct you on how you have to proffer it or what the rules of evidence are.

MR. SCHULMAN: I understand the rules of evidence. I don't know what you're asking for.

THE COURT: I'm asking for you to lay a proper foundation.

MR. SCHULMAN: What would be proper?

THE COURT: Go back there, please. I'm not going to tell you how to try your case. If you're so inexperienced that you don't know, —

MR. SCHULMAN: I have had 18 years of experience, and I do know.

THE COURT: Then you shouldn't be practicing here. Now, please don't argue with me. Go back there and lay a proper foundation or sit down.

(The foregoing proceedings were had at the bench out of the hearing of the jury.)

By Mr. Schulman:

Q Mrs. Davis, —

(Thereupon the Court and the law clerk conferred off the record.)

THE COURT: You may proceed, Mr. Schulman. Just lay a proper foundation and then you may proceed with this line of questioning.

Now, if you want to go into another line of questioning that doesn't require a foundation, you're free to do that.

By Mr. Schulman:

Q Miss Davis, did Mrs. Ford move into the house?

THE COURT: Sustain the objection.

Q Did there come a time when Mrs. Ford moved into the house with her family?

THE COURT: Sustain the objection.

Q Could you tell the Court whether a lease agreement was entered into between you and Mrs. Ford?

THE COURT: Sustain the objection.

MR. SCHULMAN: I'm going to ask for a mistrial.

THE COURT: Approach the bench, gentlemen.

(Thereupon respective counsel approached the bench.)

THE COURT: Ladies and gentlemen of the jury, supposing we take a short recess. Please, during the recess, do not discuss the case either among yourselves or with anyone else; keep an open mind until such time as you've heard all of the evidence and the matter has been submitted to you for your final deliberation and judgment.

You're free to return to the jury room.

(Thereupon the jury commences to leave the courtroom.)

THE COURT: Mr. — wait till the jury goes.

You may go back to your seats.

(Thereupon respective counsel returned to their counsel tables.)

THE COURT: Now, Mr. Schulman, is there any reason why the Court should not hold you in contempt for your very unprofessional conduct, your

highly prejudicial remark in the presence of the jury, and your completely unprofessional conduct here this morning?

Is there, sir?

MR. SCHULMAN: I disagree with you.

THE COURT: Very well.

MR. SCHULMAN: I'm very professional, —

THE COURT: Please, —

MR. SCHULMAN: — my conduct is not unprofessional.

You asked me; I'm answering you.

THE COURT: All right, sir.

The Court finds you in contempt and assesses a fine of $500.

Now, Mr. Schulman, I have attempted to tell you that you may pursue this line of questioning providing that you make it relevant to this case. I don't know what more I can say to you, sir. If you are inexperienced or do not know how to do it, sir, I don't believe that it is the province of the Court to instruct you.

So that you may have some idea as to where you may go:

This testimony is completely irrelevant, sir, until such time as you establish that Mrs. Kinzel knew at the time that the Fords or Mrs. Ford sought to negotiate for the rental of these premises of these facts that you are desirous of eliciting. Until such time, this testimony is not material to this case.

Now, sir, if you can understand that, we may proceed.

MR. SCHULMAN: May I be heard?

THE COURT: Yes, you may.

MR. SCHULMAN: I've got a complaint here filed by Mrs. Ford, and I am attacking the allegations in this complaint.

Now, because I don't take the procedure and the context at the time that you would like to try the case, or go into the facts, there are statements in this complaint that I am trying to controvert and show not true.

Now, I understand what you're saying about the fact that Mrs. Kinzel knew; that's something else, that's something different. The question that I'm attacking is the validity and the statements made in this complaint. And I don't think that I should — that this Court or any other court should tell me what facts I should present in what sequence.

THE COURT: I'm not trying to do that.

MR. SCHULMAN: Well, that's what you're doing.

THE COURT: Have you concluded, sir?

MR. SCHULMAN: No, I haven't.

THE COURT: All right.

MR. SCHULMAN: And, for that reason, these questions I asked are proper and they're competent, because I am attacking the complete complaint, that's what I'm attacking.

Now, Mrs. Ford stated that she was ready, willing and able to rent housing. I intend to prove she wasn't ready, she wasn't willing, and she wasn't able,

through this witness and other witnesses.

Now, the fact that Mrs. Kinzel didn't know, that has no significance right now.

I know what you're talking about.

THE COURT: All right.

MR. SCHULMAN: I understand the point of law that you're talking about.

THE COURT: Very well, sir.

I have ruled, and you will proceed in those parameters that I have established.

MR. SCHULMAN: Well, let the Court know that I am attacking the statement, Paragraph 3 of the complaint, through this witness.

THE COURT: It's not material to this case unless —

MR. SCHULMAN: It's material because it's —

THE COURT: Mr. Schulman, please. We've exhausted it.

Now, please be seated, and you will be permitted to proceed within the parameters established by the Court.

Woule you kindly be seated, sir?

MR. SCHULMAN: Would you please tell me —

THE COURT: Would you kindly be seated, sir?

MR. SCHULMAN: If you will please tell me what parameters you've established, because I don't know of any parameters yet.

THE COURT: Mr. Schulman, would you kindly be seated?

MR. SCHULMAN: Well, I request the Court to tell me what parameters you have made.

THE COURT: I have already told you, sir.

Please be seated.

MR. SCHULMAN: You have never told me.

THE COURT: Call the jury back.

MR. SCHULMAN: Before the jury returns, I have a motion for a mistrial.

THE COURT: Your motion is overruled. Please be seated.

MR. SCHULMAN: Well, O.K. I would like to have a ruling on that.

THE COURT: Please be seated, sir.

(Thereupon the jury returned to the courtroom and the following proceedings were had in their hearing and presence.)

THE COURT: Ladies and gentlemen of the jury, the jury will disregard the last statement of counsel immediately before the recess and treat it as though you had never heard it.

You may proceed, Mr. Schulman.

By Mr. Schulman:

Q Mrs. Davis, —

A Yes.

Q — would you tell the Court whether on September 7th, there was an executed —

THE COURT: Sustain the objection.

Please do not lead the witness, Mr. Schulman.

Q Was there on September 7th, 1978, a lease executed and operable between you and Mr. and Mrs. Ford?

MR. FRIEDMAN: Objection.

THE COURT: Approach the bench.

(Thereupon respective counsel approached the bench.)

THE COURT: Ladies and gentlemen of the jury, kindly return to the jury room and don't discuss the case until we have submitted it to you.

(Thereupon the jury left the courtroom, and the following proceedings were had at the bench out of their hearing and presence.)

THE COURT: I have no idea where you're going with this kind of questioning, Mr. Schulman. However, I will permit you, on voir dire examination outside the presence of the jury, to try to develop whatever you are desirous of developing and we'll see whether or not it's material. But this demonstration is something that I don't believe I have ever seen during my entire experience on the bench.

Please go back and you may proceed.

MR. SCHULMAN: What demonstration are you talking about?

THE COURT: Mr. Schulman, —

MR. SCHULMAN: I don't understand. You keep —

THE COURT: Would you kindly go back there?

MR. SCHULMAN: If you would let me know what you wanted, maybe I could accommodate you. I don't know what you want?

THE COURT: I have told you; I want you to conform to the rules of evidence.

MR. SCHULMAN: I am conforming to the rules of evidence, —

THE COURT: All right.

MR. SCHULMAN: — and if you would tell me where I am not complying with it, I'd like to know.

It appears to me that you have determined — that you have determined what the issue is and what has to be proven; and I don't agree with you.

THE COURT: Well, that's your privilege, Mr. Schulman.

MR. SCHULMAN: That's right. And I don't want to be limited to your idea of what the law is.

THE COURT: I thought that was my reason for being here, sir, to determine what the issues are, —

MR. SCHULMAN: After you hear the evidence.

THE COURT: Let's proceed, Mr. Schulman, and please conform to the Court's direction.

Please go back there and don't take issue with me.

MR. SCHULMAN: I'm not, your Honor. But I'd like to know what you want; that's all.

THE COURT: I have told you time and again —

MR. SCHULMAN: I haven't heard a thing yet.

THE COURT: Well, if you would listen instead of talking —

MR. SCHULMAN: I'm listening now. Would you please tell me what you want?

THE COURT: I have told you, Mr. Schulman, that you're permitted to pursue this line of questioning if you lay a proper foundation.

Now, I'm going to permit you to examine this lady under a voir dire examination, and we'll see where you're going and we'll see whether or not it's material.

MR. SCHULMAN: O.K.

FRIDAY, DECEMBER 15, 1978, 1:30 O'CLOCK P.M.

* * * * * * *

VIRGINIA L. DAVIS,

resumed the stand and testified further as follows:

CROSS-EXAMINATION OF VIRGINIA L. DAVIS

(Resumed)

By Mr. Friedman:

* * * * * * *

Q The fact is, Mrs. Davis, that that furnace had been red tagged earlier in 1978 as being defective, isn't that true?

MR. SCHULMAN: Object, your Honor.

THE COURT: Overruled.

Q Isn't that true?

A No, it's not true.

Q But at one point it had been red tagged?

A No.

You'd have to explain what you are talking about — what you mean by "red tagged".

Q It was shut off by the gas company because it was defective?

A Never.

THE COURT: Ladies and gentlemen of the jury, would you kindly step into the jury room for a moment:

Please do not discuss the case either among yourselves or with anyone else; keep an open mind until such time as you have heard all the evidence and I have directed you on the law and the matter is submitted to you upon the instruction of the Court.

(Thereupon the jury leaves the courtroom and the following proceedings were had out of their hearing and presence.

THE COURT: Please be seated, Mr. Schulman.

(Mr. Schulman complies.)

THE COURT: Would the gentleman in the gray sweater come up here, please?

(The gentleman in the gray sweater complies.)

THE COURT: What is your name?.

MR. DAVIS: Mr. Davis.

THE COURT: Mr. who?

MR. DAVIS: Mr. Davis, D-a-v-i-s.

THE COURT: Yes.

MR. DAVIS: Virginia's husband. That's my wife.

THE COURT: This is your wife?

MR. DAVIS: Yes.

THE COURT: I've noticed during the course of her examination, Mr. Davis, and particularly during the last question and the answer, preliminary to the answer, that your wife was looking at you —

MR. DAVIS: Cause she didn't know what "red tag" meant.

THE COURT: Well, just a minute. would you kindly let me finish?

(Continuing) — and you were gesturing with your head as to what the answer should be, isn't that correct?

MR. DAVIS: "Red tag", she didn't know what it meant.

THE COURT: No, no.

Isn't that correct?

MR. DAVIS: That is not correct.

THE COURT: Mr. Schuck, —

MR. DAVIS: It was "red tag"; she didn't understand what "red tag" meant. That wasn't the truth.

THE COURT: Mr. Schuck, will you describe for the record what this gentleman has been doing throughout the examination of this witness —

MR. SCHUCK: Yes, your Honor.

THE COURT: — if you have been observing him?

MR. SCHUCK: Several questions ago, your Honor, Mr. Friedman placed a question concerning the turning off of gas at this residence.

At that point, I observed this gentleman mouth — and it was audible to me — the words "gas company".

Thereafter, he was observing the witness, who answered the questions which were subsequently placed to her.

THE COURT: I noticed it too, Mr. Davis.

Is there any reason why I shouldn't hold you in contempt?

MR. DAVIS: Whatever you feel, sir.

THE COURT: What's your purpose of sitting back there and conveying answers to this witness?

MR. DAVIS: Cause it happens to be my wife, and I —

THE COURT: That's beside the point, sir.

MR. DAVIS: Oh, I didn't know; I didn't realize that.

THE COURT: I'm going to find you in contempt, sir, and I'm going to fine you $250. And if it happens one more time, I'm going to call the Marshal down here and I'm going to take further sanctions.

Now, if you are desirous of going back there and being a proper spectator, you're free to do that. Otherwise, please leave this courtroom and this building.

Now do I make myself clear?

MR. DAVIS: Very clear.

THE COURT: Go back there.

MR. DAVIS: Fine.

(Thereupon Mr. Davis returns to the back of the courtroom.)

MR. SCHULMAN: I would like to approach the bench.

THE COURT: I've never seen the likes of this in any trial.

MR. SCHULMAN: May I approach the bench?

THE COURT: Yes, you may.

MR. SCHULMAN: May we approach the bench?

THE COURT: Yes, you may.

Mr. Davis, you have 24 hours within which to pay that fine.

(Thereupon the following proceedings were had at the bench out of the hearing of the jury.)

MR. SCHULMAN: You're Honor —

THE COURT: Yes.

MR. SCHULMAN: — let me say this:

THE COURT: Yes.

MR. SCHULMAN: I have watched Mr. Friedman badger this witness for two hours.

THE COURT: Don't tell me that, now.

MR. SCHULMAN: I — this is my opinion, I want it in the record.

THE COURT: Mr. Schulman, —

MR. SCHULMAN: And he has repeatedly asked the same questions trying to get an answer out of her that she is not going to tell him because it's not the truth.

THE COURT: Mr. Schulman, Mr. Friedman has not badgered this witness at all.

Mr. Friedman has conducted, within bounds, a reasonable and proper cross-examination.

Please go and sit down.

MR. SCHULMAN: Well, I disagree.

THE COURT: Will you go and sit down?

MR. SCHULMAN: May I continue my statement?

THE COURT: Will you please go and sit down?

MR. SCHULMAN: I will.

THE COURT: No, —

MR. SCHULMAN: I'm asking, may I complete my statement?

THE COURT: No.

MR. SCHULMAN: All right.

THE COURT: Please go and sit down.

Mr. Davis, would you come back up here?

(Mr. Davis complies.)

THE COURT: Have you had any conversation with Mr. Schulman before you came in here today?

MR. DAVIS: No. It's the first time I met Mr. Schulman.

THE COURT: Have you ever had any conversation with him?

MR. DAVIS: No, sir, I haven't.

MR. SCHULMAN: Today.

MR. DAVIS: Today I came in and I talked—

MR. SCHULMAN: We had lunch.

MR. DAVIS: We had lunch together.

THE COURT: Did you discuss this case?

MR. DAVIS: Sure I did.

THE COURT: Who else was present during the course of that lunch?

MR. DAVIS: My wife.

THE COURT: What was said?

MR. DAVIS: Just talking about the general —

THE COURT: What was said, not talking generally? I want to know what was said.

MR. DAVIS: Do you want to know everything?

THE COURT: Yes.

MR. DAVIS: O.K. Since we —

THE COURT: All right, —

MR. SCHULMAN: Shall I or not?

We didn't discuss the case. We discussed economics and the social conditions in this community. There was no discussion about the merits of the case, the issues of the case or the facts to be presented.

Is that right?

MR. DAVIS: That's correct.

THE COURT: Very well. You may go.

I'll take your professional word for it, Mr. Schulman.

MR. SCHULMAN: That's all the discussion was: Was what the social problems were in this town, and other problems.

THE COURT: All right.

THE WITNESS: Judge, could I have something to say?

THE COURT: No, please.

Call the jury back, please.

NAOMI KINZEL,

one of the defendants herein, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION OF NAOMI KINZEL

By Mr. Schulman:

* * * * * * *

Q Could you tell — did you tell any of the people when that house would be available?

A The people that I talked to that were interested in the house, I told them I didn't know when it would be available.

Usually it's not that big a thing because people have to give —

THE COURT: Sustain the objection. I think you've answered the question.

Q Well, continue with your answer to the question.

THE COURT: Mr. Schulman, she's not going to continue. Please place another question.

Q Explain the answer to the question.

THE COURT: Just a minute, now.

Read the last question and the answer back, please.

(The record was read by the reporter as follows:

"Q Could you tell — did you tell any of the people when that house would be available?

"A The people that I talked to that were interested in the house, I told them I didn't know when it would be available.

"Usually it's not that big a thing because people have to give —"

THE REPORTER: And the Court sustained the objection.

THE COURT: She's completed the answer, Mr. Schulman, and it doesn't need any explanation.

Now, please proceed.

THE WITNESS: I think —

THE COURT: Just a minute, ma'am. You have responded to your lawyer's question. You are not permitted to ramble on.

THE WITNESS: All right.

THE COURT: Place another question, Mr. Schulman.

By Mr. Schulman:

Q Miss Kinzel, could you tell the Court and jury whether anyone in particular expressed a greater interest than others in the rental of that house?

A Yes. Mr. Kenneth Moss from Tampa.

Q What was your conversation with him?

MR. FRIEDMAN: Objection.

THE COURT: Sustained.

Q Could you tell the Court and the jury whether you came into any decision as far as him being a tenant?

(Pause.)

Q (Continuing) In the event the house was available?

A Yes. I told him —

MR. FRIEDMAN: Objection.

THE COURT: Mr. Friedman, she may answer.

Let's get on with this. Go ahead, tell us what you said.

A He liked the house; I liked him; he was getting a promotion, —

THE COURT: Would you kindly tell us what you said to him, ma'am? Don't go away from the question.

A All right. He was being transferred up here, his company was offering him a promotion. He said he was very pleased with the house, —

THE COURT: Would you read the question back, please?

(Thereupon the last question was read by the reporter as follows:)

"Q Could you tell the Court and the jury whether you came into any decision as far as him being a tenant?

"(Pause.)

"Q (Continuing) In the event the house was available?")

THE COURT: Did you come to a decision if the house was available, yes or no?

(Pause.)

THE COURT: Did you, yes or no, ma'am?

THE WITNESS: I'm trying to tell you.

THE COURT: Mrs. Kinzel, —

MR. SCHULMAN: Your Honor, may I approach the bench?

THE COURT: Mr. Schulman, come here. Will you come here, please?

(The following proceedings were had at the bench out of the hearing of the jury.)

MR. SCHULMAN: She has answered the question, your Honor.

THE COURT: Mr. Schulman, —

MR. SCHULMAN: What?

THE COURT: — please, let's not have these outbursts.

MR. SCHULMAN: Well, this is not an outburst. This is a statement of fact, your Honor.

THE COURT: Will you stop making these statements in the presence of the jury, Mr. Schulman?

MR. SCHULMAN: Well then, ask the jury to leave.

THE COURT: Mr. Schulman, is there any reason why I shouldn't hold you in contempt for these outbursts?

MR. SCHULMAN: I'm not making an outburst, your Honor, —

THE COURT: Keep your voice down.

MR. SCHULMAN: — I'm —

THE COURT: Ladies and gentlemen of the jury, would you kindly go back into the jury room?

(The jury commences to leave the courtroom.)

MR. SCHULMAN: I —

THE COURT: Just a minute.

(Thereupon the jury enters the jury room and the door is closed behind them.)

THE COURT: Will you go back and sit down?

MR. SCHULMAN: I —

THE COURT: Will you go back and sit down?

MR. SCHULMAN: I'll go back and sit down.

THE COURT: All right.

(Mr. Schulman returns to counsel table and sits down.)

THE COURT: Mr. Schulman, because of your outbursts in front of the jury again, I have been required to dismiss the jury and request them to go into the jury room.

Now, your conduct, as I said before, is reprehensible. You are making prejudicial statements in the presence of this jury. Your theatrics, your expressions, everything that you do is designed to create a prejudice. You are constantly provoking witnesses and the Court.

As I have tried to explain to you on many occasions, Mr. Schulman, when the Court rules, your exceptions are noted. In the event that my rulings are improper or incorrect, you have a right to appeal whatever the

decision in this case may be. But your conduct and your actions and the improper ruling of this Court is no excuse for that conduct.

Now, the Court has listened to the question, the Court has ruled that this lady's response has been concluded, that she would not be permitted to go beyond the answer given. You insist upon taking issue with the Court after the ruling; your client insists upon insisting on answering when the Court has ruled.

I can understand the reaction of your client. Since I am confident that she has not had experience in testifying, her conduct is excusable. Your conduct is inexcusable.

Now, is there any reason why I shouldn't hold you in contempt —

MR. SCHULMAN: Yes.

THE COURT: — for this last outburst?

MR. SCHULMAN: Yes. Because you had questioned her, and I want it read into the record —

THE COURT: Yes.

MR. SCHULMAN: — whether the building was not available. She has already testified it was not available, —

THE COURT: Mr. Schulman, —

MR. SCHULMAN: — and you had taken it upon yourself to cross-examine my client.

THE COURT: Mr. Schulman, is there any reason why I should not hold you in contempt?

MR. SCHULMAN: Of course. Because I wasn't contemptuous.

THE COURT: All right.

MR. SCHULMAN: You see, that's the reason, —

THE COURT: The Court —

MR. SCHULMAN: — plus the fact that you have expressed bias and prejudice against my client. And I will not, on behalf of her, accept it without making an expression of disagreement.

THE COURT: Mr. Schulman, —

MR. SCHULMAN: Now, my client is a fine lady, and she has been cross-examined by you not only this time but other times; and that's in excess of your jurisdiction.

THE COURT: Mr. Schulman, I'm confident the record will speak for itself.

Is there any reason why I should not hold you in contempt for your conduct as a result of the last outburst?

MR. SCHULMAN: Of course. The law: That will show that you're wrong to held me in contempt period.

THE COURT: Very well.

I find you in contempt, —

MR. SCHULMAN: All right.

THE COURT: — and I fine you an additional $500.

MR. SCHULMAN: How many is that this time?

THE COURT: Will you kindly be seated?

MR. SCHULMAN: Am I to continue with my witness?

THE COURT: You will be permitted.

Now, would you go back, Mr. Court Reporter, and review for us what the last things that were said before Mr. Schulman's outburst in the presence of the jury? Go back to the initial question.

(Thereupon the record was read by the reporter as follows:)

"Q Could you tell the Court and the jury whether you came into any decision as far as him being a tenant?

"(Pause.)

"Q (Continuing) In the event the house was available?

"A Yes. I told him —

"Mr. Friedman: Objection.

"The Court: Mr. Friedman, she may answer.

"Let's get on with this. Go ahead, tell us what you said.

"A He liked the house; I liked him; he was getting a promotion, —

"The Court: Would you kindly tell us what you said to him, maam? Don't go away from the question.

"A All right. He was being transferred up here, his company was offering him a promotion. He said he was very pleased with the house, —

"THE COURT: Would you read the question back, please?

"(Thereupon the last question was read by the reporter as follows:)

"Q Could you tell the Court and the jury whether you came into any decision as far as him being a tenant?"

"The Court: Did you come to a decision if the house was available, yes or no?")

MR. SCHULMAN: Whose question was that?

THE REPORTER: That was the Court's.

MR. SCHULMAN: That's right.

(Pause.)

("The Court: Did you, yes or no, ma'am?

"The Witness: I'm trying to tell you.

"The Court: Mrs. Kinzel, —"

THE REPORTER: Then is when Mr. Schulman broke in, and you said, "Mr. Schulman, come here. Will you come here, please?"

THE COURT: Very well.

Let's call the jury back, and you may answer.

Do you understand that question, ma'am?

THE WITNESS: Did I —

THE COURT: Read the question back to the witness.

(Thereupon the Court's question was read to the witness.)

THE COURT: Do you understand the question?

THE WITNESS: Yes.

THE COURT: Call the jury back to the courtroom.

(Thereupon the jury returned to the courtroom and the following proceedings were had in their hearing and presence.)

THE COURT: Read the question back to the witness.

MR. SCHULMAN: Will the Court take note that it was the Court's question to the witness?

THE COURT: Yes, it may be so noted.

MR. SCHULMAN: I think it would be proper for the jury to know the Court asked that question.

THE COURT: Just a minute, Mr. Schulman.

Would you kindly permit the Court Reporter to read the question back?

(Thereupon the Court's question was read by the reporter as follows:)

"Did you come to a decision if the house was available, yes or no?"

THE COURT: The Court asked that question, ladies and gentlemen of the jury, if you recall.

THE COURT: Do you understand the question?

THE WITNESS: Yes.

THE COURT: You may answer, if you know.

THE WITNESS: No; because I didn't know.

THE COURT: You may proceed now, Mr. Schulman.

By Mr. Schulman:

Q Will you tell the Court and jury whether you knew if it would be available definitely?

A No, I didn't know.

CERTIFICATE

I, Nicholas M. Czompoly, Official Court Reporter in and for the District Court of the United States for the Northern District of Ohio, Eastern Division, do hereby certify that the above and foregoing is a true and correct transcript of the proceedings herein.

(signed(Nicholas M. Czompoly
Official Court Reporter

Supreme Court, U. S.
FILED
AUG 9 1979
MICHAEL RODAK, JR., CLERK

No. 78-1824

In the Supreme Court of the United States

OCTOBER TERM, 1978

IN RE MILTON PHILIP SCHULMAN, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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IN RE MILTON PHILIP SCHULMAN, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 15-17) is unreported. The opinions of the district court holding petitioner in contempt (Pet. App. 33-35) and suspending petitioner from the practice of law in the United States District Court for the Northern District of Ohio (Pet. App. 31-32, 36-49) are also unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 15-17) was entered on May 4, 1979. The petition for a writ of certiorari was filed on June 4, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court has power to suspend an attorney from the practice of law before it.

2. Whether the district court provided petitioner with adequate notice of the charges underlying suspension proceedings against him.

3. Whether the record supports the district court's finding that petitioner was three times in contempt of court.

4. Whether the court properly utilized summary proceedings in finding petitioner in contempt and whether the court complied with Rule 42(a) of the Federal Rules of Criminal Procedure.

STATEMENT

Petitioner was counsel for the defendants in a civil housing discrimination suit in the United States District Court for the Northern District of Ohio. The trial in that action commenced on December 13, 1978, and concluded on December 20, 1978. On December 14, 1978, petitioner was summarily found guilty of criminal contempt and fined $250 for acts committed in the presence of the court during petitioner's cross-examination of the plaintiff.[1] On two occasions the following day, petitioner was found guilty of criminal contempt for acts committed in the presence of the court during petitioner's direct examinations of a defense witness and of one of the defendants. He was fined $500 in each instance.[2] On December 20, 1978, the court conducted a hearing to determine whether petitioner should be suspended from the practice of law in the United States District Court for the Northern District of Ohio because of his conduct during the course of the trial.

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[1]The events leading up to the December 14, 1978, citation for contempt are set forth at Pet. App. 70-71. See also Tr. 258-263.

[2]The circumstances surrounding the second and third findings of contempt are set forth, respectively, at Pet. App. 73-78 and Pet. App. 91-97.

On February 22, 1979, the district court entered a memorandum and order reflecting its disposition of the contempt matter. It stated (Pet. App. 33):

> [O]n December 14, 1978, within the presence of the Court during the trial * * * [petitioner] did knowingly and wilfully pursue a course of conduct designed and calculated to disrupt the orderly administration of the proceedings by repeatedly disregarding the requests, admonitions and orders of this Court in the examination of a witness as is more fully disclosed by the record of these proceedings whereupon the Court imposed a finding of summary contempt against [petitioner] and levied a fine of $250.00.
>
> Thereafter, on December 15, 1978, [petitioner] persisted in his factitious outbursts and provocative conduct calculated to disrupt the orderly administration of the Court as is disclosed by the record herein requiring the imposition of two additional separate findings of summary contempt, together with two additional levies in the amount of $500.00 each against [petitioner].

The court ordered that upon payment of $250 by March 26, 1979, the $1,000 balance of the total fine imposed would be suspended (Pet. App. 34-35 & n.1). By separate memorandum and order, the court also suspended petitioner for a period of two years from the practice of law in the United States District Court for the Northern District of Ohio and imposed a number of conditions upon his readmission (Pet. App. 36-49).

Petitioner appealed.[3] The court of appeals held "that ample evidence supports the trial judge's findings of contempt and that said acts of contempt having been committed in his presence, the trial court did not err in acting summarily thereon" (Pet. App. 16). With respect to the suspension, however, the court of appeals held (*ibid.*) that the district judge acted upon unnecessarily "short notice," and that there were "marked personal feelings" between petitionr and the district judge so that the judge "should more properly have recused himslef" (*ibid.* at 17). Accordingly, the court remanded the case for further proceedings before a different district judge on the propriety of the suspension (*ibid.*).[4]

ARGUMENT

1. Petitioner contends (Pet. 8) that a district court has no power to suspend an attorney from the practice of law as a penalty for criminal contempt. However, as the court

[3]Although, as the court of appeals observed (Pet. App. 16), "the notice of appeal [did] not designate [from] which of the two orders * * * appeal [was] sought," the court nonetheless "treat[ed] the error as non-jurisdictional and construe[d] the notice to apply to both orders."

[4]The United States was not a party to the underlying litigation from which the instant contempt adjudication arose, nor did it participate in the summary proceedings leading to the contempt finding in the district court. When petitioner noticed his appeal from the contempt adjudication and the disciplinary sanction, the district court (Hon. Robert B. Krupansky) requested the United States Attorney to defend his actions on petitioner's appeal, and the United States Attorney did so.

When petitioner filed the instant petition, the district judge and the Administrative Office of the United States Courts requested the Solicitor General to prepare a responsive brief in this Court in support of the district court's action. This Brief in Opposition has been prepared pursuant to those requests and is submitted on behalf of the district judge and the Administrative Office.

of appeals correctly observed (Pet. App. 16), "the power to disbar an attorney proceeds not from the power to punish contemptuous conduct but from the court's power to supervise attorneys admitted to practice before it. *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 512-13 (1873)." See also *In re Isserman*, 345 U.S. 286, 289 (1953); *In the Matter of Abrams*, 521 F. 2d 1094, 1099 (3d Cir.), cert. denied, 423 U.S. 1038 (1975), and cases cited therein. Accordingly, as the court of appeals concluded (Pet. App. 16), "the remedies for attorney misconduct are not limited to those specified in 18 U.S.C. §401. See [*Ex parte Robinson*, *supra*] at 512; Rule 2(g), Rules of the United States District Court for the Northern District of Ohio[:] ['Any member of the Bar of this Court may for good cause * * * be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper.']."

In any event, petitioner's claim is premature. The court of appeals vacated the suspension order and remanded the case for reconsideration before a different judge. Upon further proceedings the district court may determine that discipline is unwarranted, in which event petitioner's claim will be moot. If, on the other hand, petitioner is suspended or disciplined in some other manner, he will then be able to challenge the power of the court to impose discipline and to present all his contentions to this Court by way of petition for certiorari seeking review of a final order.

2. Petitioner also contends (Pet. 6-8) that the district court did not provide him with adequate notice of the charges underlying the disciplinary proceedings. This claim too is premature. Moreover, whatever may have been the case in the original proceeding, petitioner is now fully advised of the allegations relating to the disciplinary

proceedings. In its December 20, 1978 order, the trial court charged that during the trial of the civil action, petitioner (Pet. App. 29)

> knowingly and intentionally comport[ed] himself in an unprofessional manner designed and calculated to frustrate, delay, and demean the orderly process of justice and administration of the Court, in deliberate disregard of the requirements of the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Civil Rules of the United States District Court for the Northern District of Ohio, and the specific rules and Orders of this Court; and did, despite the repeated requests, admonitions, and Orders of the Court, persist in an irresponsible course of conduct which obstructed, delayed, and demeaned the due administration of justice and the orderly conduct of this Court's business.

Thereafter, in its February 21, 1979 memorandum and order suspending petitioner from the practice of law before it, the court enumerated in 20 numbered paragraphs the acts for which petitioner was being disciplined (Pet. App. 41-46). These orders clearly suffice to apprise petitioner of the charges of misconduct, which he will have a full opportunity to answer upon remand.

3. The court of appeals found "that ample evidence supports the trial judge's findings of contempt * * *" (Pet. App. 16). Since the factual determinations of the district court have been affirmed by the court of appeals, it is unnecessary for this Court to review the findings of fact that petitioner was in contempt. See, *e.g.*, *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635 (1967).

In any event, the findings of the courts below are clearly correct. At the outset of the trial the district judge reviewed with counsel the procedures and standards of professional conduct that were to be observed during the proceeding (Pet. App. 38-39, 50-54; Tr. 11-14). The court directed counsel, *inter alia*, "to extend every courtesy" to witnesses, to pose proper questions, and to "avoid theatrics and emotional displays." The court emphasized that it would not permit counsel to engage in argument with either the court, opposing counsel, or a witness, to interrupt a witness, or to "indicate disbelief or other emotional display as a result of an[y] answer articulated by a witness." The court further instructed counsel to offer reasons for objections at side bar only and to desist in argument once the court had ruled. Notwithstanding the clarity of these admonitions, which the court reiterated at appropriate intervals during the trial, the record shows that petitioner repeatedly disregarded them.[5]

On three separate occasions (Pet. App. 70-71, 73-78, 91-97; Tr. 258-263, 366-372, 558-562), petitioner persisted in his disruptive conduct in the face of the court's express warnings that to do so would lead to a contempt citation, and the court summarily held him in contempt in each instance when he failed to justify his disobedience to the court's orders.

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[5]As reflected in the trial transcript (pertinent portions of which are included in the government's appendix in the court of appeals, which we are lodging with the Clerk of this Court), petitioner argued with the court both within and without the presence of the jury (Tr. 379, 462, 486, 527, 529-530, 581, 627-628, 651-652, 1025-1026, 1146); interrupted witnesses (Tr. 83, 183, 823, 825, 1011, 1018-1019, 1022); pursued a line of questioning after the court ruled it improper (Tr. 309-310, 315-319, 350-351, 528, 725-727, 730); sought to demean witnesses (Tr. 88, 128, 180-181, 258); sought to employ improper techniques of examination (Tr. 100, 107-111, 156-166, 172, 184-185,

a. On December 14, 1978, during his cross-examination of a witness for the plaintiff, petitioner inquired whether the witness was "trained to use deceit" (Tr. 258). The court admonished petitioner "one more time * * * [to] ask proper questions" (*ibid.*). Subsequently, in response to an answer given by the witness, petitioner asked whether the witness was "sure of that" (Tr. 260). The court called petitioner to side bar and warned, "[U]nless you stop and desist from badgering these witnesses and pursuing these tactics that you're pursuing, I'm not only going to terminate your examination of her, but I'm going to find you in contempt" (Tr. 260). Continuing his examination, petitioner asked whether prior to trial the witness had attended a meeting concerning her testimony at trial (Tr. 262). The following then occurred (Tr. 262-263):

[PETITIONER]: And didn't [plaintiff's counsel] question each one of you witnesses in a manner which [I] would question you on the stand when you got on the stand?

* * * * *

[THE WITNESS]: Yes.

[PETITIONER]: And after you gave the anwer that was supposed to be the question by [me], weren't you told to correct it a little bit so that the testimony would come out a little [bit] better in favor of—

206, 350-351, 369, 383, 450-451, 709-711, 721, 797-799); interposed reasons for objections in open court (Tr. 228, 242); engaged in theatrics through his facial expressions and voice inflections (Tr. 208, 349, 559-560, 765, 1025-1026); and, at side bar, spoke in tones audible to the jury (Tr. 348, 516-517, 759, 761, 763-765, 1158).

[THE WITNESS]: No.

[PETITIONER]: No, huh?

[THE WITNESS]: No; we were told to tell the truth.

[PETITIONER]: Naturally you're told to tell the truth.

After instructing the jury to disregard petitioner's remark, the court called petitioner to the bench, gave him an opportunity to advise the court of any reason he should not be held in contempt, and, when petitioner offered no valid reason, found him in contempt.

b. The following day, on December 15, 1978, during petitioner's direct examination of a defense witness, the court informed petitioner at side bar that he must lay a proper foundation before pursuing his line of questioning and that unless he did so, the court would not permit him to proceed (Tr. 366). Nonetheless, petitioner continued in the same vein (Tr. 368), requiring the court to interrupt the proceedings again to ask petitioner to approach the bench (Tr. 369). The court repeated its instructions that petitioner could not proceed with his line of questioning absent a proper foundation and advised him, "if you want to go into another line of questioning that doesn't require a foundation, you're free to do that" (Tr. 370). After this second bench conference, petitioner asked three more questions along the same lines, to which the court sustained objections (Tr. 370-371). Following the court's ruling on the third question, petitioner asked for a mistrial in the presence of the jury, once more causing the court to interrupt the trial and send the jury out (Tr. 371). After asking petitioner whether there was any reason he should not be held in contempt, the court then held him in contempt for his "very unprofessional conduct [and his] highly prejudicial remark in the presence of the jury" (Tr. 372).

c. Later that same day, petitioner was held in contempt a third and final time. While petitioner's client was on the stand, the court asked her a question (Tr. 557). After petitioner interruped the court, he was requested to approach the bench and instructed to "stop making these statements in the presence of the jury" (Tr. 558). Petitioner responded, "Well then, ask the jury to leave" (*ibid.*). Although petitioner was directed to keep his voice down, the court found it necessary to send the jury out of the courtroom (*ibid.*). The following colloquy then occurred (Tr. 559-562):

THE COURT: Mr. Schulman, because of your outbursts in front of the jury again, I have been required to dismiss the jury and request them to go into the jury room.

Now, your conduct, as I said before, is reprehensible. You are making prejudicial statements in the presence of this jury. Your theatrics, your expressions, everything that you do is designed to create a prejudice. You are constantly provoking witnesses and the Court.

As I have tried to explain to you on many occasions, Mr. Schulman, when the Court rules, your exceptions are noted. In the event that my rulings are improper or incorrect, you have a right to appeal whatever the decision in this case may be. But your conduct and your actions and the improper ruling of this Court is no excuse for that conduct.

* * * * *

Now, is there any reason why I shouldn't hold you in contempt—

[PETITIONER]: Yes.

THE COURT: —for this last outburst?

[PETITIONER]: Yes. Because you had questioned her, and I want it read into the record—

THE COURT: Yes.

[PETITIONER]: —whether the building was not available. She has already testified it was not available,—

THE COURT: Mr. Schulman,—

[PETITIONER]: —and you had taken it upon yourself to cross-examine my client.

THE COURT: Mr. Schulman, is there any reason why I should not hold you in contempt?

[PETITIONER]: Of course. Because I wasn't contemptuous.

THE COURT: All right.

[PETITIONER]: You see, that's the reason,—

THE COURT: The Court—

[PETITIONER]: —plus the fact that you have expressed bias and prejudice against my client. And I will not, on behalf of her, accept it without making an expression of disagreement.

THE COURT: Mr. Schulman,—

[PETITIONER]: Now, my client is a fine lady, and she has been cross-examined by you not only this time but other times; and that's in excess of your jurisdiction.

THE COURT: Mr. Schulman, I'm confident the record will speak for itself.

Is there any reason why I should not hold you in contempt for your conduct as a result of the last outburst?

[PETITIONER]: Of course. The law: That will show you that you're wrong to hold me in contempt period.

THE COURT: Very well. I find you in contempt,—

[PETITIONER]: All right.

THE COURT: —and I find you an additional $500.

As this Court observed in *Maness* v. *Meyers*, 419 U.S. 449, 459 (1975), orders issued during trial "must be complied with promptly and completely, for the alternative would be to frustrate and disrupt the progress of the trial * * *. * * * [O]nce the court has ruled, counsel and others involved in the action must abide by the ruling and comply with the court's orders." See also *United States* v. *Seale*, 461 F. 2d 345, 371 (7th Cir. 1972):

> As governor of the trial, the trial judge must have the authority necessary to ensure the orderly and expeditious progress of the proceedings. His directives in the exercise of this authority must be obeyed; otherwise the clear result would be courtroom chaos.

Accordingly, "[w]henever counsel * * * oversteps the bounds of propriety and refuses to heed the admonitions of the court or to obey in the presence of the court a lawful order of the court, he commits an act of contempt." *Jones* v. *United States*, 151 F. 2d 289, 290 (D.C. Cir. 1945). See also *United States* v. *Wilson*, 421 U.S. 309, 314-316 (1975); *Commonwealth of Pennsylvania* v. *Local Union 542, International Union of Operating Engineers*, 552 F. 2d 498, 503 (3d Cir.), cert. denied, 434 U.S. 822 (1977); *In re Dellinger*, 502 F. 2d 813, 816 (7th Cir. 1974), cert. denied, 420 U.S. 990 (1975); *In re Osborne*, 344 F. 2d 611 (9th Cir. 1965); *United States* v. *Galante*, 298 F. 2d 72, 75 (2d Cir. 1962); *Hallinan* v. *United States*, 182 F. 2d 880, 887 (9th Cir. 1950), cert. denied, 341 U.S. 952 (1951).[6]

Overall, and in each of the three specific instances, petitioner's continued and deliberate defiance of the trial court's orders caused a serious disruption of the trial proceeding and constituted an affront to the integrity and authority of the court. Despite clear and repeated warnings, petitioner persisted in such conduct as badgering witnesses and impugning their integrity, asking improper questions of witnesses, and making prejudicial

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[6] *In re McConnell*, 370 U.S. 230 (1962), relied on by petitioner (Pet. 12-13), is not to the contrary. In *McConnell* this Court held that an attorney who *obeyed* the court's order to cease questioning was not in contempt of court despite announcing his intention to violate the court's order. As the Seventh Circuit observed in *United States* v. *Seale*, *supra*, 461 F. 2d at 371 (footnote omitted):

> The unmistakable implication of In re McConnell * * * is that defiance of the court's order to cease questioning would have actually obstructed the proceedings.

and disrespectful comments in the presence of the jury. Petitioner's conduct exhibited "a deliberate and studied design to ignore the rulings of the Court" (*Hallinan* v. *United States*, supra, 182 F. 2d at 887) that resulted in no fewer than three delays in the proceedings, and as such was "subversive to due and orderly procedure in the courtroom, and tending to obstruct the due administration of justice" (*Jones* v. *United States*, supra, 151 F. 2d at 290). On all three occasions the court properly found petitioner's conduct to have been contumacious.

4. Petitioner argues (Pet. 8-11) that the district court erred in utilizing summary proceedings in finding him in contempt and that the court failed to comply with the provisions of Rule 42(a) of the Federal Rules of Criminal Procedure. That rule provides:

> A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

Petitioner's first claim was correctly rejected by the court of appeals (Pet. App. 16). As reflected in the district court's order of February 21, 1979 (Pet. App. 33), the acts of contempt were committed in the presence of the court. Moreover, as shown above, petitioner's misconduct, which continued in each of the three instances in spite of repeated warnings to desist, constituted an "obstruction [] of court proceedings that literally disrupted the progress of the trial and hence the orderly administration of justice," thus justifying the imposition of summary contempt punishment. *United States* v. *Wilson*, *supra*, 421 U.S. at 315-316 (footnote omitted).

See also *Sacher* v. *United States*, 343 U.S. 1, 9-10 (1952); *United States* v. *Schiffer*, 351 F. 2d 91 (6th Cir. 1965), cert. denied, 384 U.S. 1003 (1966).

Petitioner's second claim (Pet. 10), that the district court failed to comply with the provisions of Rule 42(a), appears to be a challenge to the sufficiency of the order of contempt. Since the court's order makes clear that the judge saw or heard petitioner's acts of contempt and explicitly recites that such acts were committed "in the presence of the Court during the trial" (Pet. App. 33),[7] and since the order was signed by the judge and entered of record, the only arguable deficiency is in the court's statement of the facts.

The courts of appeals have held that the contempt order must recite the facts upon which the conviction is based with sufficient particularity to permit informed appellate review. See, *e.g.*, *United States* v. *Mars*, 551 F. 2d 711, 715 (6th Cir. 1977); *United States* v. *Camil*, 497 F. 2d 225, 228-229 (5th Cir. 1974); *United States* v. *Schrimsher*, 493 F. 2d 842, 844-845 (5th Cir. 1974); *United States* v. *Marshall*, 451 F. 2d 372, 374-375 (9th Cir. 1971); *Pietsch* v. *President of the United States*, 434

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[7] In this case the district judge in his order certified the necessary facts to invoke the summary contempt procedure of Fed. R. Crim. P. 42(a). This certification need not be contained in a document separate from the contempt order. See 3 C. Wright, *Federal Practice and Procedure: Criminal*, §708, at 169 (1969) ("The certificate, or order of contempt, must recite the facts constituting the contempt and must be signed by the judge and entered of record"). Such procedure fully satisfies the need for a formal written entry by the judge "in order that it may appear of record just what the judge acted upon and in order that it may not be necessary for the judge to testify." *Widger* v. *United States*, 244 F. 2d 103, 107 n.12 (5th Cir. 1957).

F. 2d 861, 863-864 (2d Cir. 1970), cert. denied, 403 U.S. 920 (1971); *Tauber* v. *Gordon*, 350 F. 2d 843, 845 (3d Cir. 1965) (en banc).

In the instant case, the order specified that the first contempt occurred on December 14, 1978, when petitioner "repeatedly disregard[ed] the requests, admonitions and orders of this Court in the examination of a witness as is more fully disclosed by the record of these proceedings" (Pet. App. 33). The order further recited that on December 15, 1978, petitioner's "factitious outbursts and provocative conduct calculated to disrupt the orderly administration of the Court as is disclosed by the record herein requir[ed] the imposition of two additional separate findings of * * * contempt" (*ibid.*). Particularly in light of the specific and express discussions concerning petitioner's contempt as contained in the transcripts for December 14 and 15, the order's "description of the event[s] in question is sufficiently detailed to permit [a reviewing court] to locate the relevant transcript pages." *Commonwealth of Pennsylvania* v. *Local Union 542, International Union of Operating Engineers, supra*, 552 F. 2d at 503 n.8. Since the court warned petitioner prior to each instance in which he was held in contempt and asked him whether there was any reason he should not be held in contempt, and thus petitioner "was fully advised of all the facts and circumstances upon which the district judge based his order, and was given an opportunity to respond" (*In re Niblack*, 476 F. 2d 930, 932 n.2 (D.C. Cir.), cert. denied, 414 U.S. 909 (1973)), the court's description was sufficient to satisfy the purposes and the requirements of the rule.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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